

2008 No. 541

EDUCATION, ENGLAND AND WALES

**The Teachers' Pensions (Miscellaneous Amendments)
Regulations 2008**

Made - - - - - *28th February 2008*

Laid before Parliament *7th March 2008*

Coming into force - - - *1st April 2008*

The Secretary of State for Children, Schools and Families makes the following Regulations in exercise of the powers conferred by sections 9 and 12 of, and Schedule 3 to, the Superannuation Act 1972(a).

In accordance with section 9(5) of that Act, he has consulted with representatives of local education authorities and of teachers and with representatives of other persons likely to be affected.

In accordance with section 9(1) of that Act these Regulations are made with the consent of the Treasury(b).

PART 1

General

Citation, commencement and interpretation

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

(2) The amendments made by regulation 15 have effect from 6th April 2006.

(3) In these Regulations—

“the 1994 Regulations” means the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994(c); and

“the 1997 Regulations” means the Teachers' Pensions Regulations 1997(d).

(a) 1972 c.11; section 9 was amended by sections 4, 8 and 11 of the Pensions (Miscellaneous Provisions) Act 1990 (c.7) and paragraph 7 of Schedule 8 to the Pension Schemes Act 1993 (c.48) and article 107 of S.I. 2001/3649; section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990. The Secretary of State's functions under sections 9 and 12 of the Superannuation Act 1972 were transferred, in or as regards Scotland, to the Scottish Ministers by virtue of section 63 of the Scotland Act 1998 (c.46) read with article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I.1999/1750).

(b) See S.I. 1981/1670.

(c) S.I. 1994/2924. Relevant amending regulations are S.I. 1997/3001, 2006/736 and 2006/2214.

(d) S.I. 1997/3001. Relevant amending regulations are SI 2000/665, 2004/587, 2006/736, 2006/2214 and 2006/3122.

PART 2

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

2. The 1994 Regulations are amended in accordance with the following provisions of this Part.
3. In regulation 2(3)—
 - (a) insert the following definition at the appropriate place in alphabetical order—

““old regulation C9” of the 1997 Regulations has the meaning given to it in Schedule 1(a) to those Regulations;”, and
 - (b) in the definition of “salary” for “regulation C9 or C10” substitute “old regulation C9 or regulation C10”.
4. In regulation 7 for “regulation C9 or C10” substitute “old regulation C9 or regulation C10”.
5. In regulation 12(6) for “the period of 5 years” substitute “a period specified in the notice, being a period of no less than 5 years and no more than 10 years”.
6. In regulation 16—
 - (a) in paragraph (2A) for “12(1)” substitute “12(1A)”, and
 - (b) in paragraph (3)(a) omit “12(6); or”.

PART 3

Amendment of the Teachers' Pensions Regulations 1997

Amendment of the Teachers' Pensions Regulations 1997

7. The 1997 Regulations are amended in accordance with the following provisions of this Part.

Discounted periods of pensionable employment where teachers' contributions are not made

8.—(1) In paragraph (1) of regulation B1 (which makes general provision about pensionable employment) for “regulations B4 to B6” substitute “regulations B4 to B6A”.

- (2) After regulation B6 insert—

“Discounted periods of pensionable employment where teachers' contributions are not made

B6A.—(1) This regulation applies where—

- (a) the Secretary of State makes a demand under paragraph (2) of regulation C18 in respect of contributions of any of the kinds referred to in paragraph (1)(a) of that regulation (“the demand”);
- (b) the whole of the sum so demanded has not been paid at the end of the period of 3 years beginning on the date on which the demand is made;
- (c) the Secretary of State decides that this regulation should apply and gives written notice to that effect to the person to whom the demand was given; and
- (d) where any amount has been paid to the Secretary of State in part satisfaction of the demand, the Secretary of State repays that amount to the person on giving the notice referred to in sub-paragraph (c).

(a) The definition of “old regulation C9” was inserted by SI 2006/3122.

(2) Any period of employment to which the contributions referred to in paragraph (1)(a) relate is not to be treated as a period of pensionable employment for the purposes of these Regulations.”.

Removal of the cap on contributable salary

9.—(1) In regulation C1 (which makes provision about the salary on which contributions are payable)—

- (a) in paragraph (8)—
 - (i) for “paragraphs (9) and (10)” substitute “regulation C1A”, and
 - (ii) omit “in terms of section 590C of the Taxes Act”;
- (b) omit paragraphs (9), (10) and (11); and
- (c) in paragraph (12), after the definition of “pay order” insert—

““permitted maximum” has the meaning given to it by regulation 1(2) of the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006(a);”.

(2) After regulation C1 insert—

“Removal of the cap on contributable salary

C1A.—(1) Regulation C1(8) only applies to a person—

- (a) who is a relevant person, and
- (b) in respect of whom that regulation has not ceased to apply by virtue of paragraph (2).

(2) Regulation C1(8) will cease to apply (in accordance with paragraphs (9) to (11)) to a relevant person—

- (a) who on or after 1st April 2008 elects in accordance with paragraph (4) for that provision not to apply for the purposes of determining the amount of the person’s contributable salary; or
- (b) who does not make such an election but the circumstances specified in paragraph (5) or (8) apply to that person.

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

- (a) who is in pensionable employment immediately before 1st April 2008; and
- (b) who immediately before that date is a person to whom regulation C1(8) applies.

(4) The election referred to in paragraph (2)(a) must—

- (a) be made by giving written notice to the Secretary of State;
- (b) include a written notice from the person’s employer confirming that the employer consents to regulation C1(8) not applying for the purposes of determining the amount of the person’s contributable salary; and
- (c) be received by the Secretary of State on or before 31st December 2008.

(5) Subject to paragraph (7), the circumstances are that at any time on or after 1st April 2008 the relevant person referred to in paragraph (2)(b) begins a new employment.

(6) For the purposes of paragraph (5), a person is to be treated as beginning a new employment if the person—

- (a) begins pensionable employment with an employer who is different from the employer in relation to the pensionable employment referred to in paragraph (3)(a), or

(a) S.I. 2006/364.

(b) continues in pensionable employment with the same employer but in a new post under a different contract of employment.

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

(8) The circumstances are that at any time on or after 1st April 2008—

(a) the contract of employment of the relevant person is varied so that he is required to undertake functions which are materially different from those the person was required to undertake before the variation was made; and

(b) the employer gives written notice to the Secretary of State of the variation of the person's contract of employment.

(9) In the case of a person to whom paragraph (2)(a) applies, regulation C1(8) ceases to apply on the last day of the month in which notice of the election is received by the Secretary of State in accordance with paragraph (4).

(10) In the case of a person to whom paragraphs (2)(b) and (5) apply, regulation C1(8) ceases to apply immediately before the date on which the person begins the new employment referred to in paragraph (5).

(11) In the case of a person to whom paragraphs (2)(b) and (8) apply, regulation C1(8) ceases to apply immediately before the date on which the variation in the contract of employment takes effect.”.

(3) In regulation D1(1) for “regulation D2” substitute “regulations D2 and D5”.

(4) After regulation D4 insert—

“Calculation of reckonable service where cap on contributable salary is removed

D5.—(1) This regulation applies for the purposes of determining the length of reckonable service of a person—

(a) who is a relevant person within the meaning of paragraph (3) of regulation C1A (removal of the cap on contributable salary); and

(b) who has made the election referred to in paragraph (2)(a) of that regulation, or is a person to whom paragraph (2)(b) and either paragraph (5) or (8) of that regulation apply.

(2) The reckonable service of such a person is (rounded up to the nearest day)—

$$A + (Bx \frac{C}{D}),$$

where—

A is the aggregate of periods of uncapped reckonable service;

B is the aggregate of periods of capped reckonable service;

C is the permitted maximum which has effect on the relevant date; and

D is—

(a) the amount of the person's contributable salary in the period of 12 months ending on—

(i) in a case to which paragraph (2)(a) of regulation C1A applies, the last day of the month in which notice of the election is received by the Secretary of State in accordance with paragraph (4) of that regulation;

(ii) in a case to which paragraphs (2)(b) and (5) of regulation C1A apply, the last day of the person's pensionable employment referred to in paragraph (3)(a) of that regulation; or

- (iii) in a case to which paragraphs (2)(b) and (8) of regulation C1A apply, the day immediately before the date on which the variation of the contract of employment takes effect; or
 - (b) where the amount referred to in sub-paragraph (a) is less than the permitted maximum, the permitted maximum.
- (3) In this regulation—
- (a) the reference to periods of capped reckonable service are to periods of employment or service which apart from this regulation the person would be entitled to count as reckonable service in accordance with the provisions of this Part, and in respect of which—
 - (i) regulation C1(8) applies; or
 - (ii) in the case of transferred-in service, the benefits payable in respect of the employment or service under the relevant pension scheme were subject to the limits imposed under section 590C of the Taxes Act^(a) or regulation 4 of the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006;
 - (b) references to periods of uncapped reckonable service are to any periods which apart from this regulation the person would be entitled to count as reckonable service in accordance with the provisions of this Part and which are not periods of capped reckonable service;
 - (c) “permitted maximum” has the meaning given in regulation C1(12);
 - (d) in paragraph (3)(a)—
 - (i) the reference to transferred-in service is to service which the person is entitled to count as reckonable service by virtue of regulation F4(8) (acceptance of transfer values) or regulation F4A(3) (acceptance of transfer values as part of a bulk transfer); and
 - (ii) the reference to the relevant pension scheme, in relation to transferred-in service, is to the previous scheme (within the meaning of regulation F4(1)) or, as the case may be, the pension scheme under which the past service pension rights referred to in regulation F4A(1) had accrued;
 - (e) the reference to the amount of contributable salary received by the person is to the amount of contributable salary calculated in accordance with regulations C1 and C2, but disregarding paragraph (8) of regulation C1; and
 - (f) the relevant date is—
 - (i) in the case of a person to whom paragraph (2)(a) of regulation C1A applies, the first day of the first month after the date on which notice of the election is received by the Secretary of State in accordance with paragraph (4) of that regulation;
 - (ii) in the case of a person to whom paragraphs (2)(b) and (5) of regulation C1A apply, the date on which the person begins the new employment referred to in paragraph (5) of that regulation; or
 - (iii) in the case of a person to whom paragraphs (2)(b) and (8) of regulation C1A apply, the date on which the variation of the contract of employment takes effect.”.

(5) In regulation E28 (which makes provision about the amount of a surviving spouse’s, surviving civil partner’s, surviving nominated partner’s or nominated beneficiary’s long term pension)—

- (a) in paragraph (4), after “paragraphs (3), (5)” insert “, (7C)”;

^(a) Section 590C was inserted by the Finance Act 1989 (c. 26), Schedule 6, paragraph 4(a). Section 590C has subsequently been repealed by the Finance Act 2004, Schedule 42, Part 3.

- (b) in paragraph (6), for “paragraph (3)” substitute “paragraphs (3) and (7C)”;
- (c) in paragraphs (7) to (7B), in each case after “paragraphs (3)” insert “, (7C)”;
- (d) after paragraph (7B) of regulation E28 insert—

“(7C) Regulation D5 has effect for the purpose of calculating the length of the family benefit service of a deceased person, who was a person to whom paragraph (1) of that regulation applied, as that regulation would have had effect for the purpose of calculating the person’s reckonable service.

(7D) For the purposes of paragraph (7C)—

- (a) references in regulation D5 to reckonable service shall be taken as references to family benefit service; and
 - (b) references in paragraph (3)(a) and (b) of that regulation to the provisions of Part D shall be taken as references to paragraphs (3) to (7B) of this regulation.”.
- (6) In the second column of Schedule 1—
- (a) in the definition of “Permitted maximum”, for “Construe” substitute “Except as provided in regulations C1(12) and D5(2), construe”; and
 - (b) for the definition of “Transfer of undertakings” substitute—
 - “Means—
 - (a) where the transfer takes place on or after 6th April 2006, a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006(a); and
 - (b) where the transfer takes place before that date, a transfer of undertakings within the meaning given by the Transfer of Undertakings (Protection of Employment) Regulations 1981(b).”.

Insertion of references to parental leave

10. In each of the following provisions after “paternity” insert “, parental”—

- (a) regulation C2(1)(a);
- (b) regulation C2(9);
- (c) regulation D1(3)(b);
- (d) regulation E4(4)(c)(i)(bb);
- (e) regulation E8A(1)(b)(c);
- (f) regulation E25(1)(a);
- (g) regulation E31(7)(a);
- (h) regulation H3(1)(g).

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

11.—(1) In regulation C3C(d)(election in respect of additional benefits) for paragraph (1) substitute—

“(1) Any person in pensionable employment—

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

(a) S.I. 2006/246; amendments are made to that instrument which are not relevant to these Regulations.
 (b) S.I. 1981/1794, revoked by S.I. 2006/246 except in relation to transfers of undertakings which took place before 6th April 2006.
 (c) Regulation E8A was inserted by paragraph 31(3) of Schedule 3 to S.I. 2006/3122.
 (d) Regulation C3C was inserted by paragraph 11 of Schedule 3 to S.I. 2006/3122.

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

(2) In Schedule 2A(a)(election in respect of additional benefits)—

(a) in paragraph 4—

(i) in sub-paragraph (a) after “the normal pension age” insert “unless the person falls within sub-paragraph (aa)” and omit “and” at the end of that sub-paragraph;

(ii) after sub-paragraph (a) insert the following—

“(aa) where the election is made by a person who is a pre-2007 entrant who has attained the age of 60 years, the period ends before the person attains the age of 65 years, and”; and

(b) in paragraph 27(b), after “the normal pension age” insert “or, where the election is made in respect of a person who is a pre-2007 entrant who has attained the age of 60 years, the age of 65 years”.

Treatment on transfer from certain other public service pension schemes

12.—(1) In paragraph (2) of regulation EA1(b)(which defines various terms) after “in paragraph (3)” insert “or the condition in paragraph (3A)”.

(2) After paragraph (3) of that regulation insert—

“(3A) The condition is that—

(a) the person enters pensionable employment on or after 1st January 2007;

(b) the person enters pensionable employment by virtue of a transfer of undertakings or by virtue of arrangements equivalent to a transfer of undertakings; and

(c) immediately before entering pensionable employment the person was—

(i) in employment pensionable under a public service pension scheme, and

(ii) entitled under the rules of that scheme to receive benefits on retirement from such employment before or on attaining the age of 60 years.

(3B) In paragraph (3A)—

(a) “public service pension scheme” has the same meaning as in section 1 of the 1993 Act(c) except that it does not include an occupational pension scheme established under section 7 of the Superannuation Act 1972; and

(b) the reference to arrangements equivalent to a transfer of undertakings is to arrangements—

(i) which do not constitute a transfer of undertakings, but

(ii) under which the parties to the arrangements have agreed that the rights of the persons whose employments are being transferred should as far as practicable be treated in the same way as they would have been under a transfer of undertakings.

(3C) For the purposes of paragraph (3A)(c)(ii) a person is not to be treated as being entitled under the rules of a pension scheme to receive benefits before or on attaining the age of 60 years, where such entitlement arises by virtue of any scheme rule making special provision—

(a) as to early retirement on grounds of ill health, redundancy or otherwise, or

(b) for benefits to be reduced for early payment.”.

(a) Schedule 2A was inserted by paragraph 72 of Schedule 3 to S.I. 2006/3122.

(b) Regulation EA1 was inserted by paragraph 24 of Schedule 3 to S.I. 2006/3122.

(c) 1993 c. 48.

Applications for incapacity benefit

13.—(1) In paragraph (2A) of regulation E33 (payment of benefits)—

- (a) omit “and” at the end of sub-paragraph (a), and
- (b) after sub-paragraph (b) insert—

“(c) where the person falls within regulation E4(4)(c)(i)(aa) or (cc), be made within 6 months after the end of the pensionable employment or within 6 months after the last payment of additional contributions under old regulation C9 or regulation C10 as the case may be, and

(d) where the person falls within regulation E4(4)(c)(i)(bb), be made—

- (i) where the person was on unpaid sick leave, before the period of sick leave ends, and
- (ii) in any other case, before the date on which, under the arrangements made with the person’s employer, the leave or career break is due to end.”.

Conversion of excess amount of lump sum into pension

14.—(1) In paragraph (1) of regulation E5 substitute for the words from “together with” to the end of the paragraph—

“together with—

- (a) the rate specified in regulation E5A where that regulation applies, and
- (b) any amount determined in accordance with paragraph (4B) of regulation E6 where that paragraph applies,

(but nothing in this regulation, regulation E5A or regulation E6(4B) shall prevent different parts of a person’s retirement pension being paid at different times if the person becomes entitled to the parts at different times).”.

(2) In regulation E6 (which makes provision about a person’s retirement lump sum) insert after paragraph (4)—

“(4A) Paragraph (4B) applies in any case where, but for paragraph (4), a person would be entitled to a lump sum which exceeds the person’s permitted maximum (“the notional lump sum”).

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

(4C) The increase in the annual rate of the person’s retirement pension shall be determined by the Secretary of State after taking advice from the Government Actuary. ”.

Meaning of “child” for the purposes of regulation E22

15.—(1) In paragraph (5) of regulation E22 (family benefits generally), after “adopted child,” insert—

“or

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

(2) In paragraph (11) of that regulation, for sub-paragraph (a) substitute—

“(a) in paragraph (5)(b) omit “financially”;”.

(3) Subject to paragraph (4), the amendment made by paragraph (1) applies for the purposes of determining a person’s entitlement to a pension under regulations E24 to E30 where the pension is payable at any time on or after 6th April 2006.

(4) Paragraph (3) does not apply in respect of pensions payable under regulations E24 to E30 to the children of a deceased person during the period beginning on 6th April 2006 and ending on 31st March 2008 where—

- (a) one or more payments have been made under those regulations to a child of that person during that period; and
- (b) the amount of the pension paid to that child has been determined on the basis of paragraph (5) of regulation E22 having effect without the amendment made by paragraph (1) above.

Correction of minor errors

16.—(1) In paragraph (4) of regulation E25 (amount and duration of short-term family benefits), for “E5(3)” substitute “E5(6)”.

(2) In regulation H1(a) (modified application in case of employment at reduced rate)—

- (a) in paragraph (1)(a)(ii), for “as a reduced rate” substitute “at a reduced rate”, and
- (b) in paragraph (1)(f), for “1st of January” substitute “1st January”.

(3) In paragraph 14 of Schedule 2A, insert “the” before “Secretary of State”.

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

17. In paragraph 24 of Schedule 2 insert the following entry after the entry for the Stapleford Centre—

“the Vocational Training Charitable Trust”.

Election in respect of protected benefits

18.—(1) This regulation applies to a person—

- (a) to whom a protected benefit is being paid or may become payable, and
- (b) who is placed in a worse position than the person would have been if a provision made by these Regulations had not applied in relation to the protected benefit.

(2) A protected benefit is one which is being paid, or may become payable, under the 1997 Regulations to, or in respect of, a person who was employed in qualifying employment but ceased to be employed, or died, before 1st April 2008.

(3) A person to whom this regulation applies may, by giving written notice to the Secretary of State before 1st July 2008, elect that the relevant provision shall not apply in relation to the protected benefit.

(4) If the election under paragraph (3) is made in relation to the benefit of a person who is in pensionable employment or subsequently becomes re-employed in pensionable employment—

- (a) the election has effect in relation to the benefit only to the extent that it accrues or has accrued by virtue of—
 - (i) periods of reckonable service before the cessation referred to in paragraph (2) (or, if there has been more than one cessation, the last of them before 1st April 2008), or
 - (ii) contributions paid in respect of such periods, and
- (b) in determining entitlement to, or the amount of, the benefit to that extent the person is treated as having never re-entered pensionable employment again at any time after the cessation referred to in paragraph (2)) (but without prejudice to the application of this paragraph),

and the 1997 Regulations apply accordingly.

(a) Sub-paragraphs (a) and (f) of regulation H1(1) were substituted by paragraph 62 of Schedule 3 to S.I. 2006/3122.

(5) In this regulation—

- (a) “qualifying employment” means pensionable employment or excluded employment within the meaning of the 1997 Regulations; and
- (b) “pensionable employment” and “reckonable service” have the meanings given to them by the 1997 Regulations.

19th February 2008

Jim Knight
Minister of State
Department for Children, Schools and Families

28th February 2008

Dave Watts
Alan Campbell
Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994 and the Teachers' Pensions Regulations 1997.

The amendments to the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994 ("the Principal AVC Regulations") are contained in Part 2 of these Regulations. Regulation 6 amends regulation 12 of the Principal AVC Regulations relating to the options available where a person dies within 10 years of accessing benefits. The other provisions in Part 2 make further minor amendments consequential on amendments made in the Teachers' Pensions etc. (Reform Amendments) Regulations 2006 (S.I. 2006/3122).

The amendments to the Teachers' Pensions Regulations 1997 ("the Principal Regulations") are contained in Part 3 of these Regulations.

Regulation 8 inserts regulation B6A in Part B of the Principal Regulations. Regulation B6A makes provision about disregarding periods of pensionable employment in respect of which contributions have not been paid under Part C, and where a demand has been made by the Secretary of State under regulation C18(2) and that demand has not been met in full. For the regulation to apply, the demand must be unpaid at the end of a period of 3 years beginning on the date on which it is made; the Secretary of State must have given notice in writing to the person concerned that that regulation is to apply; and any partial amount paid in pursuance of the demand must be repaid at the time that the notice is given.

Regulation 9(1) amends regulation C1 of the Principal Regulations. Paragraphs (8) and (12) of regulation C1 are amended to reflect the repeal of section 590C of the Income and Corporation Taxes Act 1988 and its replacement for transitional purposes by provisions of the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006 (S.I. 2006/364). Regulation 9(1) also amends regulation C1 to leave out paragraphs (9) to (11). This amendment is consequential on the insertion of regulation C1A (see below).

Regulation 9(2) inserts regulation C1A in the Principal Regulations. Regulation C1A provides for the disapplication in specified circumstances of the cap on contributable salary provided by regulation C1(8).

Paragraphs (3) and (4) of regulation 9 make provision which is consequential on the removal by regulation C1A of the cap on contributable salary. Paragraph (4) inserts regulation D5 in the Principal Regulations. Regulation D5 makes provision for the calculation of reckonable service where the cap on contributable salary ceases to have effect by virtue of regulation C1A.

Regulation 10 amends various provisions of the Principal Regulations to insert references to parental leave (as defined in Schedule 1 to those Regulations).

Regulation 11 amends regulation C3C of, and Schedule 2A to, the Principal Regulations to provide that a "pre-2007 entrant" who has reached the age of 60 but who is still in pensionable employment can elect under regulation C3C of the Principal Regulations to purchase additional benefits

Regulation 12 amends regulation EA1 of the Principal Regulations which amongst other things defines the term "pre-2007 entrant" as used in those Regulations. The effect of the amendment is to provide for a person to be treated as a pre-2007 entrant if he satisfies the condition specified in paragraph (3A) (as inserted by the amendment). The first element of the condition is that the person entered pensionable employment on or after 1st January 2007 by virtue of a transfer of undertakings or arrangements equivalent to a transfer of undertakings. The second element of the condition is that, immediately before doing so, he was in employment pensionable under a public service pension scheme (as defined in paragraph (3B)) and entitled under the rules of that scheme to receive benefits on retirement from such employment before or on attaining the age of 60 years.

Regulation 13 amends regulation E33 of the Principal Regulations to require applications for a pension paid because of a person's incapacity to be made within 6 months of leaving pensionable employment or of making a payment under old regulation C9 or C10 or before the end of certain periods of leave or a career break.

Regulation 14 amends regulations E5 and E6 of the Principal Regulations which relate to the amount of a person's retirement pension and lump sum. The amendment relates to the situation where, but for paragraph regulation E6(4), a person would be entitled to a lump sum which exceeded his permitted maximum ("the notional lump sum"). In those circumstances, the annual rate of the person's retirement pension is increased by an amount which represents the value of the amount by which the notional lump sum exceeds the person's permitted maximum.

Regulation 15(1) amends the definition of the expression "a person's child" in regulation E22(5) of the Principal Regulations. The amendment reinstates the limb of the definition removed by S.I. 2006/736 and has effect from 6th April 2006, the date on which S.I. 2006/736 came into force. Section 12 of the Superannuation Act 1972 confers express powers to make regulations having retrospective effect. A consequential amendment is made to regulation E22(11) by paragraph (2) of regulation 15. Paragraphs (3) and (4) contain transitional provisions so that the amendment made by paragraph (1) does not apply to any relevant benefits payable in the period from 6th April 2006 to 31st March 2008, where payments have been made to one or more children on the basis of regulation E22(5) having effect without that amendment.

Regulation 16 corrects minor errors in the Principal Regulations.

Regulation 17 amends paragraph 24 of Schedule 2 to the Principal Regulations which lists employments which are pensionable at the election of the person concerned. It includes the Vocational Training Charitable Trust in that list.

Regulation 18 makes transitional provision for opting out where rights in relation to former scheme members are adversely affected by the changes made to the Principal Regulations by these Regulations.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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