
STATUTORY INSTRUMENTS

2010 No. 990

The Teachers' Pensions Regulations 2010

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Teachers' Pensions Regulations 2010 and come into force on 1st September 2010.

Interpretation

2.—(1) Schedule 1 contains a glossary of expressions.

(2) In these Regulations, unless the context otherwise requires, an expression listed in the left-hand column of Schedule 1 has the meaning in, or the meaning contained in the provision referred to in, the corresponding entry in the right-hand column.

Meaning of “employer” in certain cases

3.—(1) Where a teacher is employed by the governing body of a school maintained by a local authority, that authority is, for the purposes of these Regulations, treated as the employer of the teacher.

(2) But for the purpose of paragraph 2(2) of Schedule 4 (contributions for additional pensions) such a governing body is also treated as the employer of such a teacher.

Meaning of “further employment”

4.—(1) A person (P) who re-enters pensionable employment after a retirement pension falling within paragraph (2) or a short-service serious ill-health grant becomes payable enters “further employment” for the purpose of these Regulations.

(2) A retirement pension falls within this paragraph if—

- (a) on the pension becoming payable, P had no reckonable service other than reckonable service previously used to calculate a benefit (including the pension), and
- (b) the pension is not an ill-health pension.

(3) Paragraph (2)(b) does not apply if at the time when P enters the employment mentioned in paragraph (1)—

- (a) where P is a pre-2007 entrant, P is at least 60, or
- (b) where P is a person with mixed service or a 2007 or later entrant, P is at least 65.

PART 2

Pensionable employment

Meaning of “pensionable employment”

5. In these Regulations a reference to “pensionable employment” includes—
- (a) in relation to employment before 1st November 1988, a reference to employment in reckonable service as defined in TSR 1976 or previous provisions;
 - (b) in relation to employment on or after 1st November 1988 and before 1st September 2010, a reference to pensionable employment as defined in Part B of TPR 1997 or Part B of TSR 1988.

Pensionable employment: general

6.—(1) An employment in a capacity mentioned in Part 1 of Schedule 2 is pensionable employment.

(2) An employment in a capacity mentioned in Part 2 of Schedule 2 is pensionable employment if the person in the employment makes an election under regulation 10 (election for employment to be pensionable) by reason of falling within paragraph (2)(b) of that regulation, in respect of that employment.

(3) An employment in a capacity mentioned in Part 3 of Schedule 2 is pensionable employment if—

- (a) the person in the employment makes an election under regulation 10 (election for employment to be pensionable) by reason of falling within paragraph (2)(b) of that regulation, in respect of that employment, and
- (b) the person’s employer consents to the election being made.

(4) Where a person who made an election under regulation B1A(4) of TPR 1997 (provision for certain organisers) remains employed as an organiser—

- (a) by a local authority, or
- (b) by a function provider in connection with the performance of a function or service in respect of which the function provider is accepted in accordance with regulation 14 (accepted function providers)

to undertake the same, or substantially the same, functions as the person was undertaking immediately before the date of the election under either the same contract of employment or a contract of employment which has effect by virtue of regulation 4 of the Transfer of Undertakings (Protection of Employment) Regulations 2006⁽¹⁾, that employment is pensionable employment.

(5) A person who immediately before 1st September 2010 was in employment (“the first employment”) which was pensionable employment under regulation B2 of TPR 1997 (continuing employment) is in pensionable employment while employed—

- (a) in the first employment, or
- (b) in employment which is in continuation of the first employment.

(6) This regulation is subject to regulation 7 (employment not pensionable: general) and regulation 8 (employment not pensionable: contributions not paid).

(1) S.I. 2006/246.

Employment not pensionable: general

7.—(1) A person is not in pensionable employment—

- (a) before the person has reached the age of 18, or
- (b) after the person has reached the age of 75.

(2) An employment is not pensionable employment unless the person (P) in that employment is entitled to be paid—

- (a) P's salary in full, or
- (b) where P is on sick leave or on adoption, maternity, parental or paternity leave, not less than half P's salary, or
- (c) statutory adoption, maternity or paternity pay.

(3) A person who makes an election under regulation 9 (election for employment not to be pensionable) is not in pensionable employment while the election has effect.

(4) Where a person with a financial interest in an accepted school is in employment as a teacher in that school, that employment is not pensionable employment.

(5) For the purpose of paragraph (4) a "financial interest" does not include the right to receive a salary.

(6) Where a person who immediately before 1st September 2010 was in part-time employment which was not pensionable by virtue of regulation B1(4) of TPR 1997 continues in the same employment, that employment is not pensionable employment.

(7) But paragraph (6) ceases to apply if the person makes an election under regulation 10 (election for employment to be pensionable) by reason of falling within paragraph (2)(c) of that regulation or enters other employment which is pensionable employment.

(8) Where a person who immediately before 1st September 2010 was in employment which was not pensionable by virtue of regulation B1(5A) of TPR 1997 continues in the same employment, that employment is not pensionable employment.

(9) But paragraph (8) ceases to apply if the person makes an election under regulation 10(1) (election for employment to be pensionable) by reason of falling within paragraph (2)(d) of that regulation or enters pensionable employment.

(10) A person—

- (a) who is in part-time employment in a capacity mentioned in Schedule 2,
- (b) to whom a teacher's pension became payable under regulation E4(6) of TSR 1988 on or before 31st March 1997,
- (c) to whom the pension remains payable (including a case where the annual rate of the pension has been reduced to zero under these Regulations) because the person does not fall within regulation 68(2), and
- (d) who has not reached the age of 60

is not in pensionable employment.

(11) Where a person is at the same time—

- (a) in full-time pensionable employment, and
- (b) in part-time employment in a capacity mentioned in Schedule 2 or in part-time employment which apart from this paragraph is pensionable by virtue of regulation 6(4) or (5),

the part-time employment is not pensionable employment.

(12) In these Regulations “excluded employment” means employment which is not pensionable employment by virtue of—

- (a) paragraph (3);
- (b) paragraph (6);
- (c) paragraph (8).

Employment not pensionable: contributions not paid

8.—(1) This regulation applies where—

- (a) the Secretary of State makes a demand under regulation 28(5) (deduction by employers of contributions, etc. from salary, payment in default and interest) in respect of contributions payable under regulation 18 (teachers’ ordinary contributions) (“the demand”),
- (b) the whole of the sum so demanded together with interest thereon has not been paid to the Secretary of State by 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) in a case where any amount has been paid to the Secretary of State in part satisfaction of the demand, the Secretary of State repays that amount.

(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.

Election for employment not to be pensionable

9.—(1) A person may make an election under this regulation by giving written notice to the Secretary of State.

(2) An election has effect from the first day of the month after the month in which the notice is given.

(3) But if the notice is given before or within 3 months after the start of employment in a capacity mentioned in Schedule 2, the election has effect from the first day of that employment.

(4) An election ceases to have effect from the date on which an election under regulation 10 (election for employment to be pensionable) has effect.

Election for employment to be pensionable

10.—(1) A person mentioned in paragraph (2) may make an election under this regulation by giving written notice to the Secretary of State.

(2) The persons are—

- (a) a person in, or about to enter, employment in a capacity mentioned in Schedule 2 who has previously made an election under regulation 9 (election for employment not to be pensionable);
- (b) a person in, or about to enter, employment in a capacity mentioned in Part 2 or 3 of Schedule 2;
- (c) a person in part-time employment which is not pensionable by virtue of regulation 7(6);
- (d) a person in part- or full-time employment which is not pensionable by virtue of regulation 7(8).

(3) An election has effect from the first day of the month after the month in which the notice is given.

(4) But where the election is made by a person mentioned in paragraph (2)(a) or (b) who gives notice before or within 3 months after the start of employment in a capacity mentioned in Schedule 2, the election has effect from the first day of that employment.

Backdating elections for employment to be pensionable

11.—(1) Where—

- (a) an election under regulation 10 (election for employment to be pensionable) is made by a person in employment in a capacity mentioned in Part 2 or 3 of Schedule 2, in non-pensionable part-time employment or in non-pensionable post-retirement employment,
- (b) (except where the election is made by a person in non-pensionable post-retirement employment) at the same time as notice of the election is given the person making the election and the person's employer request that the Secretary of State backdate the election (by making a determination in accordance with paragraph (2)(b) or (4)(b)) and the Secretary of State agrees to do so,
- (c) the person making the election and the person's employer inform the Secretary of State that they agree that contributions in accordance with sub-paragraph (d) be paid, and
- (d) the sum mentioned in paragraph (8) together with interest at the standard rate is paid to the Secretary of State,

the person's relevant employment during the back period is to be treated as pensionable employment.

(2) Where the election is made by a person in employment in a capacity mentioned in Part 2 or 3 of Schedule 2—

- (a) "relevant employment" means the employment in respect of which the election is made, and
- (b) the "back period" means the period beginning on a date determined by the Secretary of State and ending on the day on which the election has effect.

(3) The date determined for the purpose of paragraph (2)(b) must be such that the back period does not begin before or during any period of the person's opted-out employment.

(4) Where the election is made by a person in non-pensionable part-time employment—

- (a) "relevant employment" means non-pensionable part-time employment, and
- (b) the "back period" means the period beginning on a date determined by the Secretary of State and ending on the day on which the election has effect.

(5) The date determined for the purpose of paragraph (4)(b) must be such that the back period does not begin before or during—

- (a) any period of the person's opted-out employment, or
- (b) any period during which the person was employed in relevant employment by an employer who does not join in the request mentioned in paragraph (1)(b) or inform the Secretary of State as mentioned in paragraph (1)(c).

(6) Where the election is made by a person in non-pensionable post-retirement employment—

- (a) "relevant employment" means non-pensionable post-retirement employment, and
- (b) the "back period" means the period beginning on a date agreed between the person and the person's employer and ending on the day on which the election has effect.

(7) The date agreed for the purpose of paragraph (6)(b)—

- (a) must not be before 1st April 2000, and
- (b) must be such that the back period does not begin before or during—

- (i) any period of the person's opted-out employment, or
- (ii) any period during which the person was employed in relevant employment by an employer who does not inform the Secretary of State as mentioned in paragraph (1)(c).

(8) The sum is a sum equal to the contributions (due from both the person making the election and the person's employer or employers) which would have been payable to the Secretary of State if the person's relevant employment during the back period had been pensionable employment.

(9) Where the election is made by a person with mixed service, the person's relevant employment during the back period is to be treated for the purpose of these Regulations as occurring after the post-break employment start date.

(10) Where the election is made by a 2007 or later entrant, the person's relevant employment during the back period is to be treated for the purpose of these Regulations as occurring after 31st December 2006.

(11) In this regulation—

“non-pensionable part-time employment” means employment which is not pensionable by virtue of regulation 7(6);

“non-pensionable post-retirement employment” means employment which is not pensionable by virtue of regulation 7(8);

“opted-out employment” means—

- (a) employment in a capacity mentioned in Part 1 of Schedule 2 which was not pensionable by virtue of an election under regulation 9 (election for employment not to be pensionable);
- (b) employment in a capacity mentioned in regulation 6(4) or (5) which ceased to be pensionable by virtue of an election under regulation 9 (election for employment not to be pensionable),

and where employment falls within paragraph (a) or (b) and is also—

- (i) employment in a capacity mentioned in Part 2 or 3 of Schedule 2,
 - (ii) non-pensionable part-time employment, or
 - (iii) non pensionable post-retirement employment,
- that employment is opted-out employment.

Election for part-time employment before 1st May 1995 to be pensionable

12.—(1) The employer of a person (P) may, by giving written notice to the Secretary of State, elect that a period of P's employment falling within paragraph (5) is to be pensionable.

(2) The election may relate to—

- (a) the whole of the period of employment falling within paragraph (5), or
- (b) a part of that period, ending on the day before the original election date, specified in the election.

(3) The election must—

- (a) be made with the consent of P,
- (b) contain a statement by the employer that—
 - (i) the employment falls within paragraph (5), and
 - (ii) the condition in paragraph (6) is satisfied.

(4) The election only has effect if—

- (a) it is made before 1st September 2012, and
 - (b) P had, before 1st September 2010, elected that the period of the employment which fell after the original election date was to be pensionable.
- (5) A period of P's employment falls within this paragraph if it is part-time employment on or after 8th April 1976 and before 1st May 1995—
- (a) which was not pensionable employment, and
 - (b) which would have been pensionable employment if it had been full-time, but
 - (c) in respect of which P could not have elected (pursuant to regulations under SA 1972) for the employment to be pensionable.
- (6) The condition in this paragraph is that the election under this regulation is made during the employment in question or within 6 months after the end of it.
- (7) For the purpose of paragraph (6) where P is employed by the same employer on more than one successive contract of employment, the employment with that employer is not treated as having ended until the end of any stable employment relationship between that employer and P.
- (8) For the purposes of paragraph (7) in any case where section 26 of the Further and Higher Education Act 1992(2) applies to P, the transferor and the further education corporation are to be treated as the same employer (and where that section applies to P by virtue of an order under section 27 of that Act the transferor further education corporation and the transferee further education corporation are to be treated as the same employer).
- (9) In paragraphs (10) to (13) “the necessary payment” is an amount determined by the Secretary of State, after taking advice from the scheme actuary, as representing the employee's contributions calculated on the basis of the “Public Sector Settlement Model” published by the Employment Tribunals Service in May 2003(3).
- (10) An employer making an election is to provide the Secretary of State with such information as the Secretary of State may reasonably require to calculate the necessary payment.
- (11) Where the necessary payment is made to the Secretary of State in accordance with paragraph (12), the period of part-time employment specified in the election is to be treated as pensionable employment, except where paragraph (14) applies.
- (12) The necessary payment is to be made in the manner and at the times specified in arrangements agreed between the Secretary of State and P or, in default of agreement, determined by the Secretary of State.
- (13) Arrangements for making the necessary payment may include—
- (a) payment of a lump sum or instalments,
 - (b) deduction of amounts from P's retirement lump sum,
 - (c) payment of additional monthly contributions,
 - (d) reduction of the retirement pension which would otherwise be payable to P, or
 - (e) deduction of amounts from interest on P's retirement lump sum or retirement pension.
- (14) Where—
- (a) the Secretary of State is satisfied (despite the statement by the employer referred to in paragraph (3)(b)) that the employment does not fall within paragraph (5) or that the condition in paragraph (6) is not satisfied, or
 - (b) the election does not have effect because paragraph (4)(b) does not apply

(2) 1992 c. 13

(3) This is also available on HM Treasury's website; <http://www.hm-treasury.gov.uk>

the election is to be treated as an election by P under regulation 10 (election of employment to be pensionable) and the conditions in paragraph (1)(a) to (c) of regulation 11 (backdating elections for employment to be pensionable) are to be treated as satisfied.

(15) In this regulation “the original election date” means the first date on which P could have elected (pursuant to regulations under SA 1972) that the employment was to be pensionable.

Accepted schools

13.—(1) An establishment is an accepted school if—

- (a) immediately before 1st September 2010 it was an accepted school under regulation B3 of TPR 1997, or
- (b) the Secretary of State accepts it for the purpose of this regulation by giving its proprietor a written notice specifying the date on which it becomes an accepted school.

(2) An establishment may be accepted only if—

- (a) it is an establishment mentioned in paragraph (3),
- (b) its proprietor makes a written application to the Secretary of State, and
- (c) a guarantee is provided to the Secretary of State.

(3) The establishments are—

- (a) an independent school (in England) registered under section 99 of the Education and Skills Act 2008⁽⁴⁾ or (in Wales) registered under section 161 of EA 2002;
- (b) an establishment providing further education constituted by an amalgamation of establishments which provided such education of which at least one was an accepted school;
- (c) a school which is a member of COBISEC and is located in a member State other than the United Kingdom;
- (d) the establishment which, when teachers were employed there for the purpose of the Ministry of Defence, was known as Welbeck, the Defence Sixth Form College.

(4) An establishment, if accepted by the Secretary of State, becomes an accepted school from the date agreed between the Secretary of State and its proprietor, which must be the first day of a month after that in which the application under paragraph (2)(b) is made, or, if the establishment is one mentioned in paragraph (3)(b), either the first day of such a month or the date of the amalgamation referred to in that sub-paragraph.

(5) An establishment accepted by the Secretary of State ceases to be an accepted school from the date specified in a written notice given to its proprietor by the Secretary of State.

(6) A notice under paragraph (5) may be given if—

- (a) the proprietor of the establishment makes a written application to the Secretary of State,
- (b) the proprietor fails to comply with any provision of these Regulations or of TSAVCR 1994,
- (c) the establishment ceases to be an establishment mentioned in paragraph (3),
- (d) where a guarantee was previously provided to the Secretary of State, either the guarantee lapses, or because of a change in circumstances, the Secretary of State considers that the guarantee is insufficient,
- (e) where the proprietor of the establishment is an individual or a number of individuals, that individual or one of those individuals is an undischarged bankrupt or is the subject of a bankruptcy restrictions order or an interim order under Schedule 4A to IA 1986⁽⁵⁾, or

(4) 2008 c.25

(5) Schedule 4A was inserted by the Enterprise Act 2002 (c.40), Schedule 20.

- (f) where the proprietor of the establishment is a company—
- (i) a proposal for a voluntary arrangement has been made or approved in relation to the company under Part 1 of IA 1986,
 - (ii) an administration application has been made or a notice of intention to appoint an administrator has been filed with the court or an administrator has been appointed for the company under Schedule B1 to IA 1986(6),
 - (iii) a receiver, manager or administrative receiver has been appointed for the company under Part 3 of IA 1986,
 - (iv) a winding-up petition has been presented, a winding-up order has been made or a resolution for voluntary winding-up has been passed in relation to the company under Part 4 or 5 of IA 1986, or
 - (v) notice has been received that the company may be struck off the register of companies or an application to strike it off has been made under Part 31 of CA 2006.

(7) The proprietor of an accepted school must immediately give written notice to the Secretary of State of any change in proprietor or upon the occurrence of any of the events mentioned in paragraph (6)(e) or (f).

(8) In this regulation “guarantee” means a bond, guarantee or indemnity in a form and amount, and provided by a person, approved by the Secretary of State in respect of sums due, under these Regulations and TSAVCR 1994, from the proprietor and from any other person by whom teachers are employed at the establishment.

Accepted function providers

14.—(1) A function provider is accepted pursuant to this regulation in respect of a function or service if the Secretary of State gives it a written notice specifying—

- (a) that function or service, and the local authority to which the function or service relates, and
 - (b) the date on which it becomes accepted in respect of that function or service, which must be a date agreed between the Secretary of State and the function provider.
- (2) A function provider may be accepted only if—
- (a) it makes a written application to the Secretary of State specifying the function or service in respect of which it wishes to be accepted, and
 - (b) a guarantee is provided to the Secretary of State.
- (3) The functions or services in respect of which a function provider may be accepted are—
- (a) a function which it performs on behalf of a local authority in accordance with a direction under section 497A(4) of EA 1996;
 - (b) an education function of a local authority which it is nominated to exercise under section 497A(4A)(7) of EA 1996 or section 15(6) of the Local Government Act 1999(8);
 - (c) a service which it provides or makes available under a best value arrangement for the purposes of, or in connection with, the exercise of an education function of a local authority.

(6) Schedule B1 was inserted by the Enterprise Act 2002, Schedule 16.

(7) Section 497A was inserted by section 8 of the [School Standards and Framework Act 1998\(c.31\)](#); subsection (4A) was inserted by section 60 of the Education Act 2002 (c. 32).

(8) [1999 c.27](#)

(4) A function provider who immediately before 1st September 2010 was accepted under regulation B3A of TPR 1997(9) in respect of a function or service is treated as accepted pursuant to this regulation in respect of that function or service.

(5) A function provider accepted in accordance with this regulation ceases to be so accepted in respect of such functions and services, and from such date, as the Secretary of State may specify in a written notice given to the function provider by the Secretary of State.

(6) A notice under paragraph (5) may be given if—

- (a) the function provider makes a written application to the Secretary of State,
- (b) the function provider fails to comply with any provision of these Regulations or TSAVCR 1994,
- (c) where a guarantee was previously provided to the Secretary of State, either the guarantee lapses or because of a change in circumstances the Secretary of State considers that the guarantee is insufficient,
- (d) a proposal for a voluntary arrangement has been made or approved in relation to the function provider under Part 1 of IA 1986,
- (e) an administration application has been made, a notice of intention to appoint an administrator has been filed with the court or an administrator has been appointed for the function provider under Schedule B1 to IA 1986,
- (f) a receiver, manager or administrative receiver has been appointed for the function provider under Part 3 of IA 1986,
- (g) a winding-up petition has been presented, a winding-up order has been made or a resolution for voluntary winding-up has been passed in relation to the function provider under Part 4 or 5 of IA 1986, or
- (h) notice has been received that the function provider may be struck off the register of companies or an application to strike it off has been made under Part 31 of CA 2006.

(7) A function provider accepted in accordance with this regulation must give written notice to the Secretary of State immediately upon the occurrence of any of the events mentioned in paragraph (6) (d) to (h).

(8) In these regulations “function provider” means a body corporate other than a local authority which—

- (a) is specified in a direction under section 497A(4) of EA 1996,
- (b) is nominated under section 497A(4A) of EA 1996 or section 15 of the Local Government Act 1999, or
- (c) provides or makes available services under a best value arrangement.

(9) In this regulation—

“best value arrangement” means a contract or other arrangement made with a local authority for the provision of, or the making available of, services for the purposes of, or in connection with, the exercise of an education function of that local authority;

“guarantee” means a bond, guarantee or indemnity in a form and amount, and provided by a person, approved by the Secretary of State in respect of sums due from the function provider under these Regulations and TSAVCR 1994.

PART 3

Contributions

CHAPTER 1

Contributable Salary

Contributable salary

15.—(1) The contributable salary of a person (T) is the total of—

- (a) the amounts mentioned in paragraph (2), if T is a school teacher for the purposes of section 122 of EA 2002, or
- (b) the amounts mentioned in paragraph (3) in any other case

but (in either case) does not include any amounts mentioned in paragraph (4).

(2) The amounts are—

- (a) the amount paid to T by T's employer in respect of T's pensionable employment in accordance with any pay order;
- (b) the amount paid by T's employer to T in respect of T's pensionable employment in satisfaction of any contractual liability arising out of sick leave or maternity, paternity, parental or adoption leave;
- (c) the amount paid by T's employer to T in respect of T's pensionable employment in satisfaction of any statutory liability arising out of sick leave or maternity, paternity, or adoption leave;
- (d) the amount equal to any part of T's salary which T has given up the right to receive pursuant to a salary sacrifice arrangement.

(3) The amounts are—

- (a) the amount of the salary, wages, fees and other payments paid to T for T's own use by T's employer in respect of T's pensionable employment;
- (b) the amounts mentioned in paragraph (2)(b) to (d);
- (c) the amount of any payment made to T—
 - (i) where the payment is by way of bonus made as part of a pay settlement which applies to all persons, or to all persons of a particular class or description, employed at the institution at which T is employed, or
 - (ii) where the payment is calculated by reference to T's performance or the performance of the institution at which T is employed and is paid pursuant to arrangements under which T's employer (E) makes payments calculated by reference to the performance of E's employees or the performance of the institution.

(4) The amounts are—

- (a) any benefit in kind or the money value of such a benefit other than one which falls within regulation 16 (contributable salary - residential accommodation);
- (b) the amount of any payment by way of bonus other than a payment falling within paragraph (3)(c);
- (c) the amount of any payment in respect of overtime;
- (d) the amount of any payment by way of travelling or expense allowance;
- (e) the amount of any payment in consideration for the loss of, or the agreement to give up the right to, paid leave under T's contract of employment;

- (f) the amount of any payment in lieu of notice to terminate T's contract of employment;
 - (g) the amount of any payment by way of an honorarium;
 - (h) the amount of any payment in respect of any duties that are not part of T's duties in T's capacity as a teacher;
 - (i) if T is employed as mentioned in paragraph 12 of Schedule 2 (teacher in a European School), any amount not payable by, or money value of a benefit in kind not attributable to, the Secretary of State.
- (5) This regulation is subject to regulation 17 (cap on contributable salary).
- (6) In this regulation—
- “pay order” means an order under section 122 of EA 2002 for the time being in force and includes any document referred to in such an order;
- “salary sacrifice arrangement” means—
- (a) if T is a school teacher for the purposes of section 122 of EA 2002, an arrangement specified in any pay order under which T gives up the right to receive part of T's gross salary in return for T's employer's agreement to provide T with benefits in kind as specified in the pay order;
 - (b) in any other case, an arrangement of the type mentioned in sub-paragraph (a) in which T's employer's agreement is to provide T with benefits in kind of an identical description to those specified in any pay order for the time being in force.

Contributable salary - residential accommodation

- 16.**—(1) In this regulation “residential benefits in kind” means the money value of—
- (a) any residential accommodation provided to a person (T) in connection with T's employment,
 - (b) any heat, lighting or water provided free in respect of the accommodation, and
 - (c) any council tax paid on T's behalf in respect of the accommodation.
- (2) Residential benefits in kind are also part of T's contributable salary if the conditions in paragraph (4) are met.
- (3) But if the total of the money value of the residential benefits in kind exceeds one sixth of the aggregate of the amounts mentioned in regulation 15(2) or, where applicable, regulation 15(3) (a) and (b), the excess is not part of T's contributable salary.
- (4) The conditions are—
- (a) that T's employer (E) makes a written application to the Secretary of State, within 3 months of the start of the employment or (if later) the first day on which the accommodation is provided, for the money value of residential benefits in kind to be part of T's contributable salary,
 - (b) the Secretary of State is satisfied that it is expedient for residential accommodation to be provided to T in connection with T's employment, and
 - (c) E certifies that E will review the value of the residential benefits in kind at the times referred to in paragraph (5) and provide written notification to the Secretary of State of the results of the reviews.
- (5) The first review must be carried out within 2 years of the start of T's employment or, if later, the first day on which the accommodation is provided, and each subsequent review must be carried out within 2 years of the previous review.

(6) Where, pursuant to paragraphs (2) to (5), the money value of residential benefits in kind is part of T's contributable salary, that money value is to be treated as having formed part of T's contributable salary from the date of the start of T's employment or (if later) the first day on which the accommodation was provided.

(7) Where the employer does not carry out the necessary reviews in accordance with paragraph (5) or notify the Secretary of State of the results of each review, the Secretary of State may treat the residential benefits in kind as never having been part of T's contributable salary and, in that event, the Secretary of State is to repay to the employer the amount specified in paragraph (8) together with interest as specified in paragraph (9).

(8) The amount is the difference between—

- (a) all contributions referred to in regulation 30(1)(a) and (b) paid by the employer during the period when the residential benefits were treated as part of T's contributable salary, and
- (b) all contributions referred to in regulation 30(1)(a) and (b) which would have been payable during that period without the residential benefits being treated as part of T's contributable salary

less the amount of the tax chargeable on contributions of that amount under section 205 of FA 2004.

(9) The interest is interest on the contributions referred to in paragraph (8) at the rate of 3% per year, compounded with yearly rests, from the first day of the financial year following that in which they were paid to the date of repayment.

(10) This regulation is subject to regulation 17 (cap on contributable salary).

Cap on contributable salary

17.—(1) In this regulation a “relevant person” is a person who—

- (a) entered pensionable employment after 31st May 1989 with no right to count any period before 1st June 1989 as reckonable service and is not a person to whom paragraph (2) or (3) applies,
- (b) was in pensionable employment immediately before 1st April 2008,
- (c) has not made an election under regulation C1A(2)(10) of TPR 1997 (removal of the cap on contributable salary), and
- (d) is not a person to whom regulation C1(8) of TPR 1997 has ceased to apply because the person began a new employment (see regulation C1A(5) of TPR 1997) or because the person's contract of employment was varied (see regulation C1A(8) of TPR 1997).

(2) This paragraph applies to a person who was in pensionable employment before 1st June 1989 and who resumed pensionable employment following—

- (a) an absence on maternity leave in respect of which she was entitled to a right to return from leave pursuant to Chapter 1 of Part 8 of the Employment Rights Act 1996(11),
- (b) a period of secondment or additional period of absence necessarily attributable to that secondment, or
- (c) (where neither sub-paragraph (a) nor (b) applies), a break in teaching employment not exceeding one year.

(3) This paragraph applies to a person who was in comparable United Kingdom service before 1st June 1989 and who subsequently enters pensionable employment provided that there has not been

(10) Regulation C1A was inserted by [S.I. 2008/541](#).

(11) [1996 c.18](#). Chapter 1 of Part 8 was substituted by Schedule 4 to the Employment Relations Act 1999 ([c. 26](#)) and amended by section 17 of the Employment Act 2002 ([c. 22](#)).

a period of more than one year between cessation of employment in comparable United Kingdom service and entering pensionable employment.

(4) In the case of any relevant person, in any tax year or part of a tax year in which the person's annual rate of contributable salary, calculated in accordance with regulations 15 and 16 exceeds the permitted maximum, that excess does not form part of the person's contributable salary.

(5) But if the circumstances specified in paragraphs (6) or (9) apply to that person paragraph (4) will cease to apply in accordance with paragraphs (10) and (11).

(6) Subject to paragraph (8), the circumstance is that the relevant person begins a new employment.

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

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

(8) Paragraph (6) does not apply where the person begins pensionable employment with a different employer by reason of a transfer of undertakings.

(9) The circumstances are that—

- (a) the contract of employment of the relevant person (P) is varied so that P will be required to undertake functions which are materially different from those which P 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 P's contract of employment.

(10) In the case of a person to whom the circumstance specified in paragraph (6) applies, paragraph (4) ceases to apply immediately before the date on which the person begins the new employment referred to in paragraph (6).

(11) In the case of a person to whom the circumstances specified in paragraph (9) apply, paragraph (4) ceases to apply immediately before the date on which the variation in the contract of employment takes effect.

(12) In this regulation "permitted maximum" has the meaning in regulation 1(2) of the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006(12).

CHAPTER 2

Employees' Contributions

Teachers' ordinary contributions

18.—(1) A person in pensionable employment must pay contributions at a percentage rate, determined in accordance with paragraphs 2 and 3 of Schedule 3 (employees' contributions), of the person's contributable salary for the time being.

(2) This regulation does not apply to a person who has reckonable service of more than 45 years.

Election to pay contributions by a person serving in a reserve force

19.—(1) This paragraph applies to a person who ceases to be in pensionable employment by virtue of being called out, or recalled, for permanent service in Her Majesty's armed forces in

pursuance of a call-out notice served, or a call-out or recall order made, under the Reserve Forces Act 1996(13).

(2) A person to whom paragraph (1) applies may by giving written notice to the Secretary of State, elect that the period mentioned in paragraph (3) is to be treated as reckonable service.

(3) The period begins on the day after the cessation of pensionable employment and ends on the earlier of the day on which—

- (a) the person's permanent service ends, or
- (b) the person begins to accrue service which counts for the purpose of benefits under the Armed Forces Pension Scheme or any other occupational pension scheme in respect of that person's permanent service.

(4) Notice under paragraph (2) may not be given more than 6 months after the end of the period mentioned in paragraph (3).

(5) Where a person has made an election under paragraph (2) the period mentioned in paragraph (3) is treated as reckonable service provided that the person pays any contributions specified in a written notice given by the Secretary of State, within 3 months after receiving such a notice.

(6) Contributions referred to in paragraph (5) are—

- (a) contributions referred to in paragraph (7), unless paragraph (11) applies,
- (b) (where applicable) any contributions referred to in sub-paragraphs (a) to (g) of regulation 28(3) (deduction by employers of contributions etc. from salary, payment in default and interest).

(7) The amount of the contributions must be calculated in accordance with—

- (a) regulation 18 (teachers' ordinary contributions), and
- (b) where an election has been made under regulation C2 of TPR 1997, regulation C3(4) of those Regulations (which continues to have effect for certain purposes by virtue of paragraph 6 of Schedule 13)

and as if the reference to "contributable salary" in regulation 18 and the reference to "actual contributable salary" in regulation C3(4) of TPR 1997 were references to the notional salary of the person who makes an election under this regulation.

(8) The notional salary of a person who makes an election under this regulation is the amount which would have been the person's contributable salary if pensionable employment had not ceased and the person had continued to be employed in the same post and on the same terms increased on 1st April following the beginning of the period specified in paragraph (3) and on each subsequent 1st April during that period by (RI-RE)/RE, where—

(9) RI is the retail prices index for the March immediately preceding the April in which the increase occurs, and

(10) RE is the retail prices index for the month in which the period began.

(11) This paragraph applies where during the period referred to in paragraph (3) the person's service pay, when aggregated with any payments under Part 5 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(14), is less than the remuneration which the person would have received if the person had continued during the period in the pensionable employment in which the person was employed immediately before being called, or recalled, into service in a reserve force.

(12) Where a person to whom paragraph (1) applies dies during permanent service before making an election under paragraph (2), the person is treated as having made such an election and any

(13) 1996 c.14

(14) 1951 c. 65

contributions due under this regulation are to be deducted from any benefits payable under these Regulations.

Contributions for additional pensions

20. Schedule 4 (contributions for additional pensions) has effect for the purpose of enabling contributions to be paid for an additional pension.

Family benefit contributions

21. Schedule 5 (family benefit contributions) has effect for the purpose of enabling family benefit contributions to be paid.

Entitlement to repayment of balance of contributions

22.—(1) This regulation applies where a person (T) has ceased to be in pensionable employment and—

- (a) T is not qualified for retirement benefits,
- (b) no transfer value has since been paid or become payable in respect of T,
- (c) T has not since taken any right to a cash equivalent,
- (d) T did not re-enter pensionable employment within one month after ceasing to be in pensionable employment, and
- (e) T has not elected to pay contributions under regulation C9 of TPR 1997 or regulation 19 (election to pay contributions by a person serving in a reserve force) for any period which includes the period beginning when T ceased to be in pensionable employment and ending one month later.

(2) But this regulation—

- (a) does not apply if T ceased to be in pensionable employment before 6th April 1980, and the salary on which contributions were payable by T under TSR 1976 or under previous provisions in any year had exceeded £5,000, and
- (b) is subject to regulation 124 (general prohibition on unauthorised payments).

(3) For the purposes of paragraph (1) if a person (T) ceases to be in pensionable employment because T is absent on maternity, paternity, parental or adoption leave in respect of which T is entitled to return from leave pursuant to any provision of, or of regulations made under, Part 8 of the Employment Rights Act 1996⁽¹⁵⁾ that period of absence is treated as pensionable employment.

(4) Where this regulation applies T is entitled to be repaid the balance of T's contributions, calculated in accordance with regulation 23, but this paragraph is subject to regulation 24 (application for repayment of contributions).

(5) The entitlement to repayment takes effect one month after the person ceased to be in pensionable employment.

Calculation of contributions to be repaid

23.—(1) The balance of contributions referred to in regulation 22(4) is (A-B)-C, where—

- A is the total of the amounts specified in paragraph (2),
- B is the total of the deductions specified in paragraph (4), and

(15) 1996 c.18; Part 8 was amended by Schedule 4 to the Employment Relations Act 1999 (c.26) and sections 1 and 3 of the Employment Act 2002 (c.22).

C is the amount of tax chargeable on (A-B) under section 205 of FA 2004.

- (2) The amounts are those of—
- (a) all contributions paid, up to the date of receipt of the application for repayment, under regulations 18 (teachers' ordinary contributions) and 19 (election to pay contributions by a person serving in a reserve force), and Schedules 4 (contributions for additional pensions) and 5 (family benefit contributions) and under the provisions of TPR 1997 specified in paragraph (3) (which continue to have effect by virtue of paragraphs 8 and 10 of Schedule 13) except—
 - (i) any treated for the purposes of regulation 126 (receipts etc. to be credited) as employers' contributions, and
 - (ii) any paid in respect of a period of pensionable employment for which a short-service incapacity grant or a short-service serious ill health grant has been paid;
 - (b) contributions paid in respect of any comparable British service in respect of which the person is entitled to count reckonable service by virtue of the acceptance of a transfer value;
 - (c) if the person (T) was entitled to count any reckonable service by virtue of the acceptance of a transfer value in respect of an employment that was not comparable British service, either—
 - (i) any payment by way of repayment of contributions, and interest, that T would otherwise have been entitled to receive under the rules of the pension scheme to which he was subject in the employment, or
 - (ii) if that scheme made no provision for the repayment of contributions, the contributions T paid under it in respect of the employment;
 - (d) interest to the date of payment at 3% per year, compounded with yearly rests—
 - (i) on the contributions mentioned in sub-paragraphs (a) and (b), from the first day of the financial year following that in which they were paid, and
 - (ii) where sub-paragraph (c) applies, on the sum mentioned in that sub-paragraph, from the first day of the financial year following that in which the transfer value was paid to the Secretary of State.
- (3) The provisions of TPR 1997 are—
- (a) regulation C3(3) where an election has been made under regulation C2(1) of those Regulations,
 - (b) Part 1 or 2 of Schedule 4, where an election has been made under regulation C4(2) of those Regulations, and
 - (c) regulation C9, where an election has been made under paragraph (2) of that regulation.
- (4) The deductions are—
- (a) the amount of any previous repayment of contributions,
 - (b) if the Secretary of State has made a payment in lieu of contributions, or the person is entitled to equivalent pension benefits, half of the amount of the payment in lieu of contributions that was, or, as the case may be, would otherwise have been made, and
 - (c) if the Secretary of State has paid a contributions equivalent premium, the amount recoverable by the Secretary of State under sections 61 to 63 of PSA 1993.

Application for repayment of contributions

24.—(1) An amount to which a person is entitled under regulation 22 is to be paid to the person only if the Secretary of State receives a written application for payment and paragraph (2), if applicable, is complied with.

(2) The applicant (A) must provide any relevant information specified by the Secretary of State which is in A's possession, or which A can reasonably be expected to obtain, if the Secretary of State notifies A in writing that such information is required.

Return of repaid contributions

25.—(1) This paragraph applies to a person—

- (a) to whom the Secretary of State repaid contributions before June 1973, and
- (b) who is in pensionable employment or comparable British service.

(2) But paragraph (1) does not apply to a person—

- (a) to whom a teacher's pension is payable, or
- (b) who is in comparable British service and in respect of whom the Secretary of State has paid a cash equivalent or a transfer value since the end of the person's last period of pensionable employment.

(3) A person to whom paragraph (1) applies may, by giving written notice to the Secretary of State, elect to return the contributions to the Secretary of State with interest.

(4) Where a person makes an election under paragraph (3) the person must pay the amount to the Secretary of State within 10 weeks of receiving written notice of the amount.

(5) Interest is payable at the rate of 3.5% per year compounded with yearly rests from the date on which the contributions were repaid to the date on which the payment of the return of contributions is made.

Repayment of contributions where salary is restricted under regulation 39

26.—(1) This regulation applies where the relevant salary of a person (P) during the last 365 days of P's average salary service is restricted by regulation 39.

(2) Where this regulation applies the Secretary of State is to repay—

- (a) to P a sum equivalent to A-B, and
- (b) to P's last employer before retirement benefits became payable to P, a sum equivalent to C-D.

(3) In paragraph (2)—

A is the aggregate of the contributions paid by P under regulation 18 or Schedule 5 or under Schedules 4 or 5 of TPR 1997 during all relevant periods;

B is the aggregate of the contributions which would have been paid under regulation 18 or Schedule 5 or under Schedules 4 or 5 of TPR 1997 during all relevant periods if P had actually received the salary which P is treated as receiving during each relevant period by virtue of regulation 39(2)(a), (b) or (c);

C is the aggregate of the contributions paid by P's employer under regulation 27 during all relevant periods;

D is the aggregate of the contributions which would have been paid by P's employer under regulation 27 if P had actually received the salary which P is treated as receiving during each relevant period by virtue of regulation 39(2)(a), (b) or (c).

(4) In this regulation a "relevant period" is any of—

- (a) the last 365 days of P's average salary service,
- (b) Year 1 (as defined in regulation 39(9)), or
- (c) Year 2 (as defined in regulation 39(9))

in which P is treated as receiving a relevant salary in accordance with regulation 39(2)(a), (b) or (c) but Year 1 or Year 2 are only relevant periods if the operation of regulation 39(2)(b) or (c) affects the relevant salary which P is treated as receiving during the last 365 days of P's average salary service.

CHAPTER 3

Employers' contributions

Employers' contributions

27.—(1) The employer of a person in pensionable employment is to pay contributions at a percentage rate of the person's contributable salary for the time being, determined in accordance with paragraph 4 of Schedule 3 (employers' contributions).

(2) No contributions are to be paid in respect of any person who has reckonable service of more than 45 years.

CHAPTER 4

Deduction and payment of contributions

Deduction by employers of contributions, etc. from salary, payment in default and interest

28.—(1) The employer of a person in pensionable employment must deduct from that person's salary each month the contributions and instalments mentioned in paragraph (3).

(2) If any contributions or instalments referred to in paragraph (1) are not deducted in the appropriate month in accordance with that paragraph the employer may deduct such contributions or instalments from the person's salary in any subsequent month (but this paragraph does not affect regulation 30(1)(a) (payment by employers to Secretary of State)).

(3) The contributions and instalments are—

- (a) the contributions payable under regulation 18 (teachers' ordinary contributions);
- (b) any contributions payable under arrangements made under regulation 12(13)(c) (election for part-time employment before 1st May 1995 to be pensionable);
- (c) any contributions payable under the terms of—
 - (i) an order of the Court determining a part-time claim, or
 - (ii) a compromise of a part-time claim in accordance with the "Public Sector Settlement Model" published by the Employment Tribunals Service in May 2003;
- (d) any contributions payable under regulation C3(4) of TPR 1997 (which continues to have effect by virtue of paragraph 6 of Schedule 13 (savings and transitional provisions)) as a result of an election made under regulation C2(1) of those Regulations;
- (e) any contributions payable under Schedule 4 (contributions for additional pensions);
- (f) any contributions payable in accordance with Schedule 4 to TPR 1997 (which continues to have effect by virtue of paragraph 8 of Schedule 13) as a result of an election made under regulation C4(2) of those Regulations;
- (g) any contributions payable in accordance with Schedule 5 to TPR 1997 (which continues to have effect by virtue of paragraph 10 of Schedule 13);
- (h) any contributions payable under Schedule 5 (family benefit contributions);

- (i) any instalments payable under regulation C16(5) to (7) of TPR 1997 (return by persons of repaid contributions by instalments) (which continues to have effect by virtue of paragraph 14 of Schedule 13).
- (4) Where a person (T) has made an election under Schedule 4 (contributions for additional pension) and is in more than one part-time employment at the same time, the contributions referred to in paragraph (3)(e)—
- (a) must be deducted by the employer nominated by T, and
 - (b) if in any month such contributions are more than the contributable salary paid by that employer for that month, the balance of such contributions must be deducted by the other employer (or, if there is more than one other employer, by whichever other employer is nominated by T).
- (5) Where a person (T) has ceased to be employed by an employer (E) and, at the time when T ceased to be employed by E—
- (a) any deduction required by paragraphs (1) to (3) to be made by E has not been made, and
 - (b) despite regulation 30(1)(a) (payment by employers to Secretary of State) a corresponding amount has not been paid to the Secretary of State pursuant to that regulation,
- any amount remaining due, together with interest at the standard rate, from the due date to the date of payment, is to be paid by T to the Secretary of State on receipt of a written demand, but the Secretary of State may in any case waive the payment of the whole or any part of such interest.
- (6) But paragraph (5) is subject to Part 4 of Schedule 13 where the date of the demand referred to in that paragraph falls before 1st December 2010.
- (7) In paragraph (5) the “due date” is the 8th day after the end of the month in which the deduction required by paragraph (1) should have been made.
- (8) In this regulation—
- “court” includes a tribunal competent to determine a part-time claim;
- “part-time claim” means a claim, made by the issue of court proceedings or otherwise, to a person who employed a person in employment falling within regulation 12(5) (election for part-time employment before 1st May 1995 to be pensionable) that there was a breach of the equality clause (as defined in section 1 of the Equal Pay Act 1970(16)) during such employment by virtue of the fact that the employment was not pensionable employment.

Recovery of unpaid contributions from benefits

29.—(1) Where regulation 8 (employment not pensionable: contributions not paid) does not apply and without prejudice to any other means of recovery, the Secretary of State may recover any sum payable by a person to the Secretary of State under this Part by deducting it from the benefits payable to, or in respect of, that person under these Regulations.

(2) Nothing in this regulation affects section 91 of PA 1995 (inalienability of occupational pensions).

Payment by employers to Secretary of State

30.—(1) The employer of a person in pensionable employment is to pay to the Secretary of State, after the end of each month—

- (a) the contributions payable under regulation 27,

(16) 1970 c.41; relevant amending enactments are the Sex Discrimination Act 1975 (c. 65) section 8(1), S.I.1983/1794 and 2005/2467.

- (b) the amounts due from that person that are required to be deducted from that person's salary under regulation 28 (whether or not such amounts were deducted), and
- (c) the contributions payable in pursuance of an election under regulation G6 of TPR 1997 (which continues to have effect by virtue of paragraph 6 of Schedule 13)

in respect of that person's contributable salary for that month.

(2) The former employer of a person in pensionable employment who has made an election under regulation G6(3) of TPR 1997 (which continues to have effect by virtue of paragraph 6 of Schedule 13) (referred to in regulations C2(1) and (6) and G6 of those Regulations as "employer A") is to pay to the Secretary of State after the end of each month the contributions in pursuance of the election.

(3) For the purposes of paragraph (1)—

- (a) all salaries are to be treated as being payable monthly in arrears, and
- (b) any arrears payable by reason of a retrospective increase in contributable salary are to be treated as having become payable in the month in which they were paid.

(4) Any payment required by paragraph (1) or (2) must be received by the Secretary of State within 7 days after the end of the month in question and if the full amount of any such payment is not so received—

- (a) interest is payable by the employer or the former employer on the amount outstanding at the standard rate from the 8th day after the end of the month in question to the date of payment, but the Secretary of State may in any particular case waive the payment of the whole or any part of such interest, and
- (b) if the Secretary of State makes a written demand, the employer or former employer must pay to the Secretary of State such further sum, not exceeding £100, as the Secretary of State may specify in the demand.

(5) But paragraph (4)(a) is subject to Part 4 of Schedule 13 where the date by which payment must be received is before 1st December 2010.

(6) The payment referred to in paragraph (4)(b) must be made within 14 days after the date of the demand.

PART 4

Transfers

Payment of transfer values

31.—(1) A transfer value is to be paid in respect of a person who has ceased to be in pensionable employment and has become subject to another registered pension scheme ("the receiving scheme").

(2) Paragraph (1) is subject to the following provisions of this regulation and to the limitations in regulation 32 (limitation on payment of transfer values under regulation 31).

(3) This regulation does not however affect a person's entitlement to a cash equivalent.

(4) A transfer value may only be paid in respect of a person who has become subject to a personal pension scheme if the person was in pensionable employment after 31st December 1985.

(5) A transfer value may only be paid under this regulation if—

- (a) the person makes a written application to the Secretary of State, and
- (b) the application is made within 12 months after the day on which the person became subject to the receiving scheme, except where the receiving scheme is comparable British service.

(6) Except as provided in paragraph (8) a transfer value is not to be paid under this regulation in respect of a person to whom, when the application was received, retirement benefits or a short-service serious ill health grant have become payable.

(7) Paragraph (6)—

(a) prevents a transfer value referable to the person's NPA 60 reckonable service being paid where—

(i) the person is a person with mixed service, and

(ii) a Case applies to that person's NPA 60 reckonable service, but not to the person's NPA 65 reckonable service, but

(b) does not prevent a transfer value referable to a person's further employment from being paid where neither retirement benefits nor a short-service serious ill health grant have become payable in respect of the further employment even though either retirement benefits or a short-service serious ill health grant have become payable in respect of previous employment.

(8) A transfer value is however to be paid under this regulation if—

(a) the employment in which the person has become subject to the receiving scheme is comparable British service, and

(b) the person entered it—

(i) immediately after ceasing to be in pensionable employment, or

(ii) on or before the person's 60th birthday, in the case of a pre-2007 entrant, or the person's 65th birthday in any other case, and

(c) the person has not applied for payment of any benefit.

(9) For the purposes of paragraph (8)(c) a person who was receiving phased retirement benefits before ceasing to be in pensionable employment is not to be treated as having applied for the payment of any benefit.

(10) A transfer value is not to be paid under this regulation in respect of a person to whom, when the application was received, a short-service annuity has become payable.

(11) A transfer value in respect of any pension credit rights or pension credit benefits is not to be paid under this regulation.

(12) Part 1 of Schedule 6 (transfer values) has effect for determining the amount of transfer values payable under this regulation.

Limitation on payment of transfer values under regulation 31

32.—(1) Where the receiving scheme is not a contracted-out occupational pension scheme a transfer value may only be paid under regulation 31 if the person—

(a) is not qualified for retirement benefits, or

(b) has ceased to be in pensionable employment before 6th April 1978, or

(c) is a married woman or widow who, by virtue of an election made or treated as made under regulations under section 19(4) of the Social Security Contributions and Benefits Act 1992(17), either is liable to pay primary Class 1 contributions or Class 2 contributions at a reduced rate or is under no liability to pay Class 2 contributions.

(17) 1992 c. 4; section 19(4) was amended by the National Insurance Contributions Act 2002 (c.19), Schedule 1, paragraph

(2) Where a person has accrued section 9(2B) rights a transfer value may only be paid under regulation 30 in respect of those rights if any applicable provisions of Part 3 of the Contracting-Out (Transfer and Transfer Payments Regulations) 1996(18) is complied with.

(3) Where the person has acquired a right to a cash equivalent, a transfer value may only be paid under regulation 31 if—

- (a) the service to which the cash equivalent relates includes service before 1st September 1988, and
- (b) the right has been exercised by requiring the whole of the cash equivalent to be paid to the scheme managers of an occupational pension scheme which is not a club scheme.

(4) Where the person has acquired a right to a part cash equivalent, a transfer value may only be paid under regulation 31 if the person would not remain qualified for retirement benefits on taking that right.

(5) In this regulation—

“occupational pension scheme” has the same meaning as in section 150(5) of FA 2004, and

“receiving scheme” has the same meaning as in regulation 31.

Payment of bulk transfer values

33.—(1) This regulation applies where, as a result of a relevant transfer to a new employer, a person or a group of persons is no longer in pensionable employment, and either has joined or is entitled to join the new employer’s pension scheme (“the receiving scheme”) referred to below as a bulk transfer.

(2) A transfer value may be calculated by the Secretary of State, after taking advice from the scheme actuary, in respect of a person who has made a written application to the Secretary of State for such a transfer within 3 months after the date on which the person was notified of the opportunity to take part in the bulk transfer arrangement.

(3) Such transfer value may be paid to the receiving scheme on the person’s becoming subject to the scheme.

Reduction in transfer value: lifetime allowance charge

34.—(1) This regulation applies where—

- (a) the lifetime allowance charge under section 214 of FA 2004 arises on the payment of a cash equivalent or a transfer value in respect of a person to a qualifying recognised overseas pension scheme, and
- (b) the person and the Secretary of State are jointly and severally liable to the charge.

(2) The Secretary of State must pay the charge.

(3) The cash equivalent or transfer value which, apart from this regulation, would be payable must be reduced to reflect the amount of the charge in such manner as the Secretary of State determines, after taking advice from the scheme actuary.

(4) In this regulation “qualifying recognised overseas pension scheme” has the same meaning as in Part 4 of FA 2004.

Acceptance of transfer values

35.—(1) A transfer value offered to the Secretary of State by the scheme managers of a registered pension scheme (“the previous scheme”) in respect of a person who has entered pensionable

employment may be accepted, but this paragraph is subject to the following provisions of this regulation and to regulation 36 (acceptance of bulk transfer values).

- (2) A transfer value may only be accepted if—
 - (a) the person (P) makes a written request to the Secretary of State, and
 - (b) the request is made within 12 months after the day on which P entered pensionable employment, except where P, while P was subject to the previous scheme, was employed in comparable British service.
- (3) A transfer value is not to be accepted if—
 - (a) before P ceased to be subject to the previous scheme retirement benefits became payable to P under regulation 60 (retirement benefits),
 - (b) benefits have become payable to the person under a provision of a statutory scheme corresponding to regulation 60, or
 - (c) the previous scheme was a money purchase arrangement as defined in section 152 of FA 2004 to which the person's employer was not a contributor and which provided benefits additional to those provided by a scheme to which he was a contributor.
- (4) But sub-paragraphs (a) and (b) of paragraph (3) do not apply if, while P was subject to the previous scheme, P was employed in comparable British service and P entered pensionable employment—
 - (a) immediately after the end of the employment,
 - (b) on or before P's 60th birthday in the case of a pre-2007 entrant or P's 65th birthday in any other case.
- (5) A transfer value in respect of any pension credit rights or pension credit benefits is not to be accepted.
- (6) A person in respect of whom a transfer value has been accepted is entitled to count reckonable service in accordance with Part 2 of Schedule 6.

Acceptance of bulk transfer values

36.—(1) This regulation applies where, as the result of a relevant transfer to a new employer, a person or a group of persons has become employed in pensionable employment and is given the opportunity to transfer past service pension rights, referred to below as a “bulk transfer”.

(2) A transfer value may be accepted by the Secretary of State in respect of a person who has made a written application within 3 months after the date on which the person was notified of the opportunity to take part in the bulk transfer, but this paragraph is subject to regulation 35(3)

(3) A person in respect of whom a transfer of such rights has been accepted as part of a bulk transfer is entitled to count reckonable service in accordance with Part 3 of Schedule 6.

PART 5

Average salary

Average salary: teacher in pensionable employment, etc. on or after 1st January 2007

- 37.**—(1) This regulation applies to a person if—
- (a) the person was in pensionable employment on or after 1st January 2007, or
 - (b) the person was paying contributions under regulation C9 of TPR 1997 or regulation 19 (election to pay contributions by a person serving in a reserve force) on or after that date.

- (2) The average salary of a person (P) to whom this regulation applies is the greater of—
 - (a) P’s relevant salary during the last 365 days of P’s average salary service, and
 - (b) the average annual rate of P’s relevant salary during P’s best salary period multiplied by A/B.
- (3) But if P has average salary service of less than 365 days, P’s average salary is the average annual rate of P’s relevant salary during such service.
- (4) In calculating the period mentioned in paragraph (2), no account is to be taken of a leap day.
- (5) But where P’s average salary service ends on or after the leap-day in a leap year, account is to be taken of that leap day in calculating those periods.
- (6) Except as provided in paragraphs (7) and (8), P’s best salary period is the 1,095 consecutive days of P’s average salary service falling within the period of 10 years ending on the last day of P’s average salary service (the “10-year period”) during which P’s increased relevant salary is the greatest.
- (7) Where P has more than 365 and less than 1,095 days of average salary service falling within the 10-year period, P’s best salary period is the number of days of P’s average salary service falling within the 10-year period.
- (8) Where P has more than 365 days of average salary service but has less than 365 days of average salary service falling within the 10-year period, P’s best salary period is the last 365 days of P’s average salary service.
- (9) P’s increased relevant salary during any period is P’s relevant salary during that period calculated as if P’s relevant salary during any relevant salary period were increased by the amount (if any) by which, immediately before the end of P’s average salary service, it would have been increased if it had been an official pension within the meaning of section 5(1) of PIA 1971 beginning, and first qualifying for increases under that Act, on the same day as the relevant salary period ended.
- (10) In paragraph (9) a “relevant salary period” means a period during which the rate of P’s relevant salary does not change.
- (11) A is the average annual rate of P’s increased relevant salary during the best salary period.
- (12) B is the amount to which the average annual rate of P’s relevant salary during the best salary period would have been increased up to the last day of P’s average salary service if it had been an official pension within the meaning of section 5(1) of PIA 1971 beginning, and first qualifying for increases under that Act, on the same day as the best salary period ended.

Average salary: teacher not in pensionable employment etc. after 31st December 2006

- 38.**—(1) The average salary of a person (P) to whom regulation 37 (average salary: teacher in pensionable employment, etc. on or after 1st January 2007) does not apply is the greatest amount which is P’s relevant salary during any 365 consecutive days of P’s average salary service falling within the last 1,095 days of such service.
- (2) But if P has average salary service of less than 365 days, P’s average salary is the average annual rate of P’s relevant salary during such service.
 - (3) In calculating the period of days mentioned in paragraph (1) or (2), no account is to be taken of a leap-day.
 - (4) But where a person’s average salary service ends on or after the leap-day in a leap year, account is to be taken of that leap-day in calculating those periods.

Restriction on average salary

39.—(1) This regulation applies for calculating the average salary of a person (P), except where P dies in pensionable employment.

(2) For the purpose of regulation 37(2)(a)—

- (a) if P's relevant salary during the last 365 days of P's average salary service is greater than $RS2 + I$, P is to be treated as receiving relevant salary during that period of an amount equal to $RS2 + I$;
- (b) where P has more than 730 days of average salary service, if P's relevant salary during Year 2 is greater than $RS1 + I$, P is to be treated as receiving relevant salary during Year 2 of an amount equal to $RS1 + I$;
- (c) where P has more than 1095 days of average salary service, if P's relevant salary during Year 1 is greater than $RS0 + I$, P is to be treated as receiving relevant salary during Year 1 of an amount equal to $RS0 + I$.

(3) In paragraph (2)—

I is the greater of—

- (a) the fixed amount—
 - (i) determined in accordance with paragraph (4) (where the last day of P's average salary service falls before 31st March 2011), or
 - (ii) relating to the financial year in which the last day of P's average salary service falls, determined in accordance with paragraph (5), in any other case, and
- (b) 10% of the annual rate of the salary to which I is added;

RS0 is the average annual rate of P's relevant salary during Year 0;

RS1 is the average annual rate of P's relevant salary during Year 1 or, where paragraph (2)(c) applies, the relevant salary during Year 1 which P is to be treated as receiving in accordance with that subparagraph;

RS2 is the average annual rate of P's relevant salary during Year 2 or, where paragraph (2)(b) applies, the relevant salary during Year 2 which P is to be treated as receiving in accordance with that subparagraph.

(4) The fixed amount where the last day of P's average salary service falls before 31st March 2011 is £ 5,000.

(5) The fixed amount where the last day of P's average salary service falls in the financial year ending on 31st March 2012 or any subsequent financial year is the fixed amount relating to the financial year before that financial year ("the previous financial year") multiplied by the factor mentioned in paragraph (6), if that factor is greater than 1, rounded to the nearest £100 (and for the purpose of this paragraph £5,000 is to be treated as the fixed amount relating to the financial year ending on 31st March 2011).

(6) The factor is $RPI1/RPI2$, where—

(7) RPI 1 is the retail prices index for February in the previous financial year, and

(8) RPI 2 is the retail prices index for February in the financial year before the previous financial year.

(9) This regulation is subject to paragraph 23 of Schedule 13.

(10) In this regulation—

"Year 0" means the 365 days of P's average salary service preceding Year 1 or, where P has less than 1,460 days of average salary service, the number of days of P's average salary service preceding Year 1;

“Year 1” means the 365 days of P’s average salary service preceding Year 2 or, where P has less than 1,095 days of average salary service, the number of days of P’s average salary service preceding Year 2;

“Year 2” means the 365 days of P’s average salary service preceding the last 365 days of P’s average salary service or, where P has less than 730 days of average salary service, the number of days of P’s average salary service preceding the last 365 days of P’s average salary service.

Average salary: supplemental

40.—(1) This regulation has effect for the purposes of regulations 37 (average salary: teacher in pensionable employment etc. on or after 1st January 2007) and 39 (restrictions on average salary).

(2) The average salary service of a person (P) is—

- (a) any period spent by P in pensionable employment;
- (b) any period in respect of which P has paid contributions under regulation C9 of TPR 1997 or under regulation 19 (election to pay contributions by a person serving in a reserve force);
- (c) any period spent by P in comparable British service—
 - (i) which began before 1st April 1974,
 - (ii) which has not been followed by a period of pensionable employment, and
 - (iii) in respect of which the Secretary of State has not paid a transfer value.

(3) For the purpose of paragraph (2)(a) where P is employed under a contract for irregular work, P must not be treated as being in employment during any period when P does not undertake work.

(4) A period of average salary service may be discontinuous.

(5) Except as provided in paragraphs (6) to (8), the relevant salary of a person (P) is—

- (a) for any period mentioned in paragraph (2)(a), P’s contributable salary or, where the period relates to part-time employment, the full-time equivalent of P’s contributable salary;
- (b) for any period mentioned in paragraph (2)(b), the notional salary by reference to which P paid contributions or, where the notional salary relates to part-time employment, the full-time equivalent of the notional salary;
- (c) for any period mentioned in paragraph (2)(c) and (d), the salary by reference to which P’s pension would have been calculated under the rules of the pension scheme relating to the comparable British service.

(6) Where P is in pensionable employment under more than one contract for part-time employment at the same time (“concurrent employment”), P’s relevant salary during any period in which the annual rate of the full-time equivalent of P’s contributable salary under each such contract does not change (“the relevant salary period”) is A/B, where—

A is the sum of E for each contract,

B is the sum of E/FTE calculated in relation to each contract,

E is P’s contributable salary during the relevant salary period, and

FTE is the annual rate of the full-time equivalent of P’s contributable salary during the relevant salary period.

(7) For the purpose of paragraph (6)—

- (a) a “contract for part-time employment” includes a contract for irregular work;
- (b) where P is employed under a contract for irregular work, P is to be treated as being in pensionable employment during any period when P does not undertake work.

(8) But where one of the contracts of employment mentioned in paragraph (6) is a contract for irregular work and another is not, P's relevant salary during concurrent employment is the greater of—

- (a) the average annual rate of P's relevant salary calculated in accordance with paragraph (6), and
 - (b) the average annual rate of P's relevant salary calculated in accordance with paragraph (6) as if any contract for irregular work were disregarded.
- (9) For the purpose of this regulation, P's contributable salary in any pensionable employment—
- (a) includes any amount by which P's salary is reduced during sick leave or adoption, maternity, parental or paternity leave;
 - (b) includes for any period beginning after 31st July 1975 and ending before 1st August 1978 any sum which would have been payable to P but for the limits on remuneration mentioned in section 1 of the Remuneration, Charges and Grants Act 1975⁽¹⁹⁾;
 - (c) is for any period beginning after 31st March 1979 and ending before 1st September 1980 P's notional salary under the Teachers' Superannuation (Notional Salaries) Regulations 1981⁽²⁰⁾.
- (10) For the purpose of this regulation, the notional salary mentioned in paragraph (5)(b)—
- (a) includes for any period beginning after 31st July 1975 and ending before 1st August 1978 any sum by reference to which the notional salary would have been calculated but for the limits on remuneration mentioned in section 1 of the Remuneration, Charges and Grants Act 1975;
 - (b) is for any period beginning after 31st March 1979 and ending before 1st September 1980 P's notional salary under the Teachers' Superannuation (Notional Salaries) Regulations 1981.

(11) In this regulation a "contract for irregular work" means a contract of employment pursuant to which the employee is available for work but undertakes and is paid for work only when and for periods requested by the employer.

PART 6

Reckonable service

Reckonable service

41.—(1) Except as otherwise provided in this Part, references in these Regulations to the reckonable service of a person (T) or to the reckonable service which a person (T) can count are references to the total of the following—

- (a) any period spent by T in pensionable employment;
- (b) any period counting as T's reckonable service by virtue of the acceptance of a transfer value;
- (c) any past period in respect of which additional contributions have been paid in accordance with Part 2 of Schedule 4 to TPR 1997;

⁽¹⁹⁾ 1975 c. 57; section 1 was amended, and the period for which it had effect extended to end with 31st July 1978, by the Price Commission Act 1977 (c.33), section 17; references to limits set out in documents laid before Parliament in 1976 and 1977 were added by S.I. 1976/1097 and 1977/1294.

⁽²⁰⁾ S.I. 1981/934

- (d) any past period, calculated in accordance with Schedule 7 of TPR 1997, in respect of which additional contributions have been paid in accordance with Part 1 of Schedule 4 to those regulations or in accordance with Schedule 5 to those Regulations;
 - (e) where T has paid contributions under regulation C9 of TPR 1997—
 - (i) if T was in full-time pensionable employment immediately before the start of the period in respect of which the contributions were paid, that period, or
 - (ii) if T was in part-time pensionable employment immediately before the start of the period in respect of which the contributions were paid, the proportion of that period which would have counted as T’s reckonable service in accordance with regulation 43 if T had continued in that employment;
 - (f) any period in respect of which T has paid contributions under regulation 19 (election to pay contributions by a person serving in a reserve force);
 - (g) where paragraph (1) of regulation 19 applies to T and, during the period mentioned in paragraph (3) of that regulation, T’s service pay, when aggregated with any payments under Part 5 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(21), is less than the remuneration which T would have received if T had continued in the pensionable employment in which T was employed immediately before being called into service in a reserve force, that period;
 - (h) any period of specified country service;
 - (i) any period counting as reckonable service by virtue of an election under regulation 4 of the Teachers’ Superannuation (Policy Schemes) Regulations 1979(22);
 - (j) any period which does not count as T’s reckonable service by virtue of sub-paragraphs (a) to (i) but which immediately before 1st September 2010 counted as T’s reckonable service under TPR 1997.
- (2) In calculating a period of reckonable service, no account is to be taken of a leap day.
- (3) But where the total of a person’s reckonable service ends on or after the leap day in a leap year, account is to be taken of that leap-day in calculating reckonable service.
- (4) In paragraph (1)(g) “service pay” means pay for performing service in a reserve force and includes marriage, family and similar allowances.

Reckonable service: exclusions

- 42.** A person’s reckonable service does not include—
- (a) any contributions refund period;
 - (b) any period in respect of which a transfer value has been paid;
 - (c) any period in respect of which a cash equivalent has been paid;
 - (d) any period which would, apart from this paragraph, result in more than 45 years counting as the person’s reckonable service;
 - (e) any period in respect of which a short-service annuity is payable.

Calculation of reckonable service where pensionable employment is part time

43.—(1) Where during a financial year a person (T) has spent one or more periods in part-time pensionable employment, for the purpose of calculating T’s reckonable service attributable to any

(21) 1951 c.65
(22) S.I.1979/47

period of such employment, each of those periods counts as 365 x CS/FTCS days of T's reckonable service, where—

- (2) CS is T's contributable salary for the period, and
- (3) FTCS is what T's contributable salary for the whole of the financial year would have been if the employment had been full-time and had continued throughout the year.
- (4) For the purpose of paragraph (1)—
 - (a) a period of part-time employment ends, and another begins, when any change occurs in the rate of T's contributable salary,
 - (b) no account is to be taken of any reduction in T's contributable salary during a period of sick leave or maternity, paternity or adoption leave,
 - (c) if a fraction of a day results from the calculation of reckonable service attributable to a period of employment, any fraction of a half or greater than a half is to be taken as one day, and any smaller fraction is to be left out, and
 - (d) if the calculation would result in more than 365 days counting as reckonable service in respect of the financial year, the excess does not count.

Calculation of reckonable service where cap on contributable salary is removed

- 44.**—(1) This regulation applies to the following—
- (a) a person who made an election under regulation C1A(2)(**23**) of TPR 1997 (removal of cap on contributable salary),
 - (b) a person to whom regulation C1(8) of TPR 1997 (salary on which contributions are payable) or regulation 17(4) of these Regulations (cap on contributable salary) ceased to apply because the person began a new employment (see regulation C1A(5) of TPR 1997 and regulation 17(6) of these Regulations), and
 - (c) a person to whom regulation C1(8) of TPR 1997 (salary on which contributions are payable) or regulation 17(4) of these Regulations (cap on contributable salary) ceased to apply because the person's contract of employment was varied (see regulation C1A(8) of TPR 1997 and regulation 17(9) of these Regulations).
- (2) The reckonable service of a person to whom this regulation applies is $CP \times PM/CS + UP$, rounded up to the nearest day.
- (3) In paragraph (2)—
- CP is the total of the person's capped periods;
 - PM is the permitted maximum having effect on Date 1;
 - CS is the greater of PM and the amount of the person's uncapped contributable salary in the period of 12 months ending on Date 2;
 - UP is the total of the person's uncapped periods.
- (4) Where the person falls within paragraph (1)(a)—
- (a) Date 1 is the first day of the month after the month in which notice of the election was received by the Secretary of State;
 - (b) Date 2 is the last day of the month in which notice of the election was received by the Secretary of State.
- (5) Where the person falls within paragraph (1)(b)—
- (a) Date 1 is the date on which the new employment began;

(23) Regulation C1A was inserted by [S.I. 2008/541](#).

- (b) Date 2 is the last day of the pensionable employment which preceded the new employment.
- (6) Where the person falls within paragraph (1)(c)—
 - (a) Date 1 is the date on which the variation of the contract of employment took effect;
 - (b) Date 2 is the day before Date 1.
- (7) In this regulation—

“capped period” means a period which, apart from this regulation, a person would be able to count as reckonable service and which is attributable either to pensionable employment in which the person’s contributable salary was subject to a cap under regulation 17(4) (cap on contributable salary), regulation C1(8) of TPR 1997 or regulation C1(12) of TSR 1988 or to a transfer value accepted from a pension scheme whose benefits were subject to the limits imposed under section 590C of the Income and Corporation Taxes Act 1988⁽²⁴⁾ or regulation 4 of the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006⁽²⁵⁾;

“permitted maximum” has the meaning in regulation 1(2) of the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006;

“uncapped contributable salary” means contributable salary without taking into account the cap under regulation 17 (cap on contributable salary), regulation C1(8) of TPR 1997 or regulation C1(12) of TSR 1988;

“uncapped period” means a period which, apart from this regulation, a person would be able to count as reckonable service and which is not a capped period.

PART 7

Benefits for teachers

CHAPTER 1

Preliminary

Introduction

- 45.** This Part makes provision for the payment of—
- (a) phased retirement benefits;
 - (b) retirement benefits;
 - (c) total incapacity benefits;
 - (d) additional pensions;
 - (e) admitted service benefits;
 - (f) short-service annuities;
 - (g) short-service serious ill-health grants.

Benefits for teachers (further employment)

46.—(1) For the purpose of calculating benefits under this Part in respect of each period after a person (P) enters further employment, P is to be treated as if P entered pensionable employment for the first time on entering the further employment.

⁽²⁴⁾ 1988 c.1; section 590C (repealed by FA 2004) was inserted by Finance Act 1989(c. 26), Schedule 6, paragraph 4.

⁽²⁵⁾ S.I. 2006/364

(2) Despite paragraph (1), P's total reckonable service attributable to employment before any further employment and to all further employment cannot exceed 45 years.

(3) Where P—

- (a) ceases to be in further employment (“the first further employment”) and satisfies the condition for retirement in relation to the first further employment, but
- (b) re-enters further employment (“the second further employment”) before making an application under regulation 107 (payment of benefits on application to Secretary of State) in relation to the first further employment

the first further employment and the second further employment are treated as a single period of further employment.

(4) This regulation is subject to paragraph 22 (further employment commencing before 1st April 1997) of Schedule 13.

CHAPTER 2

Interpretation of provisions relating to normal pension age

“2007 or later entrant”: meaning and normal pension age

47.—(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 1st 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 P was in pensionable employment at any time before 1st January 2007, and

- (a) a transfer value or a cash equivalent is paid in respect of P's pensionable employment other than to a comparable United Kingdom scheme, or
- (b) P's contributions in respect of P's pensionable employment have been repaid under regulation 22.

(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

48.—(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 1st 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 mentioned in regulation 51(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 52(4)(a) (meaning of "public sector TUPE transferee", etc.).

(4) For the purpose of paragraph (3)(a), where a transfer value 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 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, and
- (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

49.—(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”

50. 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.”

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

- (a) P enters pensionable employment on or after 1st 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 35 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 is paid in respect of that comparable United Kingdom service by a comparable United Kingdom scheme to the Secretary of State under regulation 35.

Meaning of “public sector TUPE transferee, etc.”

- 52.**—(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 arrangements 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 except that it does not include an occupational pension scheme established under section 7 of SA 1972, 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”

53.—(1) A “disqualifying break” means a period of more than 5 years ending after 31st 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,

(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 19 of these Regulations (election to pay contributions by a person serving in a reserve force) 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.

CHAPTER 3

Meaning of “qualified for retirement benefits” and “qualified for retirement benefits following further employment”

Meaning of “qualified for retirement benefits”

54.—(1) A person (T) is “qualified for retirement benefits” for the purpose of these Regulations if T satisfies any of Conditions 1 to 6.

(2) But T is not “qualified for retirement benefits” if T has been in further employment.

(3) Condition 1 is that immediately before 1st September 2010 T was qualified for retirement benefits under regulation E3(1)(a) or (b) of TPR 1997.

(4) Condition 2 is that—

- (a) (i) T was in pensionable employment on 6th April 1988 or paying contributions under regulation 30 of TSR 1976 on that date, or
- (ii) T entered pensionable employment for the first time after 6th April 1988, and
- (b) T has retirement benefits qualification service of at least 2 years.

(5) Condition 3 is that—

- (a) (i) T was in pensionable employment on 6th April 1988 or paying contributions under regulation 30 of TSR 1976 on that date, or
- (ii) T re-entered pensionable employment after 6th April 1988, having previously been in such employment, and
- (b) (i) T has retirement benefits qualification service of at least 2 years attributable to a period of employment after 5th April 1988, or
- (ii) the sum of T’s retirement benefits qualification service attributable to a period of employment after 5th April 1988 and of the periods mentioned in Schedule 9 of TSR 1988 attributable to a period of T’s employment before 6th April 1988 amounts to at least 5 years.

(6) For the purpose of Condition 3, any period of employment in respect of which the Secretary of State accepted a transfer value when T re-entered pensionable employment after 5th April 1988 is to be treated as taking place after that date.

(7) Paragraph (6) does not apply to—

- (a) a period of comparable British service, or
- (b) a period of employment pensionable under the National Health Service Pension Scheme Regulations 1995⁽²⁶⁾ in respect of which a transfer value was accepted in accordance with arrangements made for a person to whom Part 6 of Schedule 10 to TPR 1997 (which continues to have effect by virtue of paragraph 26 of Schedule 13) applies.

(8) Condition 4 is that—

- (a) T has a guaranteed minimum in relation to benefits under these Regulations, and
- (b) the Secretary of State has not paid a contributions equivalent premium in respect of T.

(9) Condition 5 is that the Secretary of State—

- (a) paid a cash equivalent or a transfer value in respect of T to the pension scheme of the Commission of the European Communities, and
- (b) has since accepted a transfer value from that scheme in respect of T.

(10) Condition 6 is that the Secretary of State has accepted a transfer value in respect of T's rights under a personal pension scheme.

Retirement benefits qualification service

55.—(1) The retirement benefits qualification service of a person (T) is the total of the following—

- (a) any period spent by T in pensionable employment;
 - (b) any period counting as reckonable service under regulation 41(1)(c),(d),(e) or (f) (reckonable service);
 - (c) any period of employment in respect of which the Secretary of State has accepted a transfer value;
 - (d) any period of comparable British service;
 - (e) any period of admitted service;
 - (f) any period of specified country service;
 - (g) any period of employment which is pensionable for the purposes of the Universities Superannuation Scheme⁽²⁷⁾;
 - (h) where T was given, but did not take, the opportunity to transfer T's past service pension rights under regulation 36, any period of employment which would have counted as T's retirement benefits qualification service under sub-paragraph (c) if the transfer value in respect of such rights had been accepted by the Secretary of State.
- (2) But T's retirement benefits qualification service does not include—
- (a) any contributions refund period;
 - (b) any period in respect of which a transfer value has been paid;
 - (c) any period in respect of which a cash equivalent has been paid.

⁽²⁶⁾ [S.I. 1995/300](#)

⁽²⁷⁾ The Universities Superannuation Scheme was established by a Declaration of Trust of 2nd December 1974 and is currently governed by a Declaration of Trust of 7th February 1994 and the rules adopted by the Deed of Consolidation of 1st October 2003 and subsequently amended by deeds of amendment.

Meaning of “qualified for retirement benefits following further employment”

56. A person is “qualified for retirement benefits following further employment” for the purpose of these Regulations if, after the person last enters further employment, the person is in pensionable employment for at least 12 months.

CHAPTER 4

Phased retirement and retirement benefits

Election to receive phased retirement benefits

- 57.—(1) This paragraph applies to a person (P) if—
- (a) P is qualified for retirement benefits or qualified for retirement benefits following further employment,
 - (b) P is 55 or over and under 75, and
 - (c) P satisfies Condition 1 or Condition 2.
- (2) Condition 1 is that—
- (a) P is in pensionable or excluded employment, and
 - (b) there is a reduction in P’s contributable salary in that employment (“the reduced salary”) such that the annual rate of the reduced salary does not exceed 80% of the average annual rate of P’s contributable salary during the 6 months before the reduction.
- (3) For the purpose of calculating the annual rate of the reduced salary, any standard increase taking effect on the day when P’s employment at the new contributable salary starts must be ignored.
- (4) Condition 2 is that—
- (a) after reaching the age of 55, P ceases to be in pensionable or excluded employment (“the previous employment”),
 - (b) within 6 months of the last day of the previous employment, P enters employment in a capacity mentioned in Schedule 2 or an employment which falls within paragraph (5) (“the new employment”), and
 - (c) the annual rate of P’s contributable salary in the new employment does not exceed 80% of the average annual rate of P’s contributable salary during the last 6 months of the previous employment.
- (5) An employment falls within this paragraph if—
- (a) P is employed by a person whose employment of P as a teacher would be employment in a capacity mentioned in Schedule 2,
 - (b) P’s normal duties in the employment include providing education or services ancillary to education other than administrative services, and
 - (c) where P is employed by a function provider, P’s duties relate to the functions or services in respect of which the function provider is accepted in accordance with regulation 14.
- (6) For the purpose of calculating the annual rate of P’s contributable salary in the new employment, any standard increase taking effect after the last day of the previous employment must be ignored.
- (7) A person (P) to whom paragraph (1) applies may elect to receive phased retirement benefits by giving written notice to the Secretary of State within 3 months after the relevant date.
- (8) An election under paragraph (7) may not be made—
- (a) on more than two occasions, or

- (b) if P makes an application under regulation 107 (payment of benefits on application to Secretary of State) for retirement benefits.
- (9) The relevant date is—
 - (a) where P satisfies Condition 1, the date on which the reduction in contributable salary takes effect, or
 - (b) where P satisfies Condition 2, the date on which P enters the new employment.
- (10) The notice must be accompanied by—
 - (a) where P satisfies Condition 1, a certificate by P's employer as to the matters mentioned in paragraph (2)(b), or
 - (b) where P satisfies Condition 2, a certificate by P's employer in the new employment as to the matters mentioned in paragraph (4)(c).
- (11) But if P's employer in the previous employment does not provide P's employer in the new employment with the information necessary to provide the certificate, the Secretary of State may determine that paragraph (10)(b) is not to apply.
- (12) The notice must specify—
 - (a) a fraction, not exceeding 0.75, of P's NPA 60 reckonable service, and
 - (b) a fraction, not exceeding 0.75, of P's NPA 65 reckonable service.
- (13) In this regulation—
 - (a) a reference to a person's contributable salary includes, in the case of a person who is in employment other than pensionable employment, a reference to the salary which would be the person's contributable salary if that employment were pensionable employment;
 - (b) "standard increase" means an increase in contributable salary which is applied generally to persons in the position of the employee in question in accordance with an order made under section 122 of EA 2002 or, where the employee is not a school teacher for the purposes of that section, by the employer;
 - (c) where—
 - (i) ill-health retirement benefits were payable to P under regulation E8 of TPR 1997, and
 - (ii) P subsequently re-enters pensionable employment
 P's reckonable service excludes any increase in reckonable service under regulation E8(2) to (6) of TPR 1997 arising from the payment of those ill health retirement benefits.

Phased retirement benefits

- 58.**—(1) This regulation applies where a person (P) makes an election under regulation 57 (election to receive phased retirement benefits).
- (2) A phased retirement pension is payable to P from the relevant date.
 - (3) Except as otherwise provided in these Regulations, the pension is payable for life.
 - (4) If P is a pre-2007 entrant or a person with mixed service, a phased retirement lump sum is payable to P on the relevant date.
 - (5) The annual rate of a phased retirement pension and the amount of any phased retirement lump sum are to be calculated in accordance with regulations 61 (annual rate of phased retirement and retirement pension) and 62 (amount of phased retirement and retirement lump sum) except as provided in the following paragraphs.
 - (6) P's average salary must be calculated as if P's average salary service ended on the date of change.

- (7) Where the election under regulation 57 (election to receive phased benefits) is P's first—
- (a) a reference to P's NPA 60 reckonable service to which a Case applies must be taken to be a reference to P's NPA 60 reckonable service up to and including the date of change multiplied by the fraction specified in the notice of the election in accordance with regulation 57(12)(a);
 - (b) a reference to P's NPA 65 reckonable service to which a Case applies must be taken to be a reference to P's NPA 65 reckonable service up to and including the date of change multiplied by the fraction specified in the notice in accordance with regulation 57(12)(b).
- (8) Where the election under regulation 57 is P's second—
- (a) a reference to P's NPA 60 reckonable service to which a Case applies must be taken to be a reference to—
 - (i) P's NPA 60 reckonable service up to and including the date of change multiplied by the fraction specified in the notice of the election in accordance with regulation 57(12)(a), less
 - (ii) the amount of P's NPA 60 reckonable service calculated in accordance with paragraph (7)(a) of this regulation;
 - (b) a reference to P's NPA 65 reckonable service must be taken to be a reference to—
 - (i) P's NPA 65 reckonable service up to and including the date of change multiplied by the fraction specified in the notice in accordance with regulation 57(12)(b), less
 - (ii) the amount of P's NPA 65 reckonable service calculated in accordance with paragraph (7)(b) of this regulation.
- (9) In this regulation—
- “contributable salary” is to be construed in accordance with regulation 57 (election to receive phased retirement benefits);
- “date of change” in relation to an election under regulation 57 means—
- (a) where a person satisfies Condition 1 of that regulation, the day before the date on which the reduction in contributable salary takes effect, or
 - (b) where a person satisfies Condition 2 of that regulation, the date on which the person ceases to be in the previous employment;
- “reckonable service” excludes any increase in reckonable service under regulation E8(2) to (6) of TPR 1997 referred to in regulation 57(13)(c);
- “relevant date” has the same meaning as in regulation 57(9).

Cessation of phased retirement pension

59.—(1) A phased retirement pension ceases to be payable to a person (P) from the date on which, following an increase in contributable salary other than a standard increase, the annual rate of P's contributable salary during the 12 months beginning on the relevant date exceeds 80% of—

- (a) where P satisfied Condition 1 of regulation 57 (election to receive phased retirement benefits) when making the election (“the failed election”), the average annual rate of P's contributable salary during the 6 months before the reduction mentioned in paragraph (2) (b) of that regulation, or
 - (b) where P satisfied Condition 2 of that regulation when making the failed election, the average annual rate of P's contributable salary in the last 6 months of the previous employment.
- (2) Where a pension ceases to be payable in accordance with paragraph (1)—

- (a) the failed election is to be taken into account in determining for the purpose of regulation 57(8) (election to receive phased retirement benefits) the number of occasions on which P makes an election under that regulation;
- (b) if P makes a subsequent election under regulation 57—
 - (i) the subsequent election is to be treated as P's first for the purpose of regulation 57(7) (election to receive phased retirement benefits),
 - (ii) the notice under regulation 57(12) (election to receive phased retirement benefits) in respect of the subsequent election must specify the same or a greater fraction of P's NPA 60 and NPA 65 reckonable service as was specified in the notice of the failed election, and
 - (iii) where P made an election to receive an additional pension with the failed election under regulation 73 (election to receive additional pension with phased retirement pension), P must make such an election with the subsequent election.
- (3) In this regulation—
 - “contributable salary” is to be construed in accordance with regulation 57;
 - “relevant date” has the same meaning as in regulation 57(9);
 - “standard increase” means an increase in contributable salary which—
 - (a) is applied generally to persons in the position of the employee in question in accordance with an order made under section 122 of EA 2002 or, where the employee is not a school teacher for the purposes of that section, by the employer, and
 - (b) is unrelated to any change in the employee's duties or hours of work or otherwise to the particular circumstances of the employee's case.

Retirement benefits

60.—(1) A person (P) falls within this paragraph if P satisfies either the condition for retirement or the condition for retirement following further employment.

- (2) P satisfies the condition for retirement if—
 - (a) P is qualified for retirement benefits, and
 - (b) a Case applies to P's reckonable service or, if P is a person with mixed service, to part of P's reckonable service.
- (3) P satisfies the condition for retirement following further employment if—
 - (a) P is qualified for retirement benefits following further employment,
 - (b) a Case applies to P's reckonable service or, if P is a person with mixed service, to part of P's reckonable service,
 - (c) where P is under 75, P makes an application under regulation 107 (payment of benefits on application to Secretary of State) for benefits under this regulation, and
 - (d) after making the application, P does not re-enter pensionable employment before the day which would be the entitlement day if P were to satisfy the condition for retirement following further employment.
- (4) A retirement pension is payable to a person (P) who falls within paragraph (1) from the entitlement day.
- (5) Except as otherwise provided in these Regulations, the pension is payable for life.
- (6) Where P is a pre-2007 entrant or a person with mixed service, a retirement lump sum is payable to P on the entitlement day, but this paragraph is subject to regulation 124 (general prohibition on unauthorised payments).

(7) The annual rate of the retirement pension and the amount of any retirement lump sum are to be calculated in accordance with regulations 61 (annual rate of phased retirement and retirement pension) and 62 (amount of phased retirement and retirement lump sum).

(8) The entitlement day is the entitlement day for the Case which applies to P's reckonable service.

(9) If P is a person with mixed service and Case A applies to P's NPA 60 reckonable service and another Case applies to P's NPA 65 reckonable service—

(a) the entitlement day for that part of P's retirement pension mentioned in regulation 61(5)(a), (c) and (d) (annual rate of phased retirement and retirement pension) and for P's retirement lump sum is the entitlement day for Case A, and

(b) the entitlement day for that part of P's retirement pension mentioned in regulation 61(5)(b) is the entitlement day for the Case which applies to P's NPA 65 service.

(10) Schedule 7 (retirement benefits) has effect for the purpose of determining whether a Case applies to P's reckonable service and, if so, the entitlement day for the Case.

(11) In these Regulations references to a Case followed by a letter are references to the relevant case as specified in Schedule 7.

Annual rate of phased retirement and retirement pension

61.—(1) This regulation applies for calculating the annual rate of phased retirement and retirement pensions.

(2) The annual rate of the pension of a person (P) is the sum of the amounts mentioned in paragraph (5).

(3) But the annual rate of a retirement pension is SB-PRP if—

(a) Case D applies to P's reckonable service or to part of P's reckonable service,

(b) P has a guaranteed minimum in relation to employment before 6th April 1997, and

(c) SB is greater than AR+PRP.

(4) In paragraph (3)—

AR is what the annual rate of P's retirement pension would be apart from paragraph (3);

PRP is the annual rate of any phased retirement pensions payable to P;

SB is the sum of the annual equivalent of P's guaranteed minimum and any equivalent pension benefits.

(5) The amounts are—

(a) $1/80 \times P's \text{ average salary} \times P's \text{ NPA 60 reckonable service to which a Case applies (in years and fractions of a year)}$,

(b) $1/60 \times P's \text{ average salary} \times P's \text{ NPA 65 reckonable service to which a Case applies (in years and fractions of a year)}$,

(c) where a lump sum is not paid to P because of regulation 124 (general prohibition on unauthorised payments), but where it would otherwise be payable to P, such amount representing the value of that lump sum as the Secretary of State determines after taking advice from the scheme actuary, and

(d) where the amount of a lump sum payable under regulation 62 (amount of phased retirement and retirement lump sum) ("the actual lump sum") is less than the amount which would, apart from paragraph (3) of that regulation, be payable ("the notional lump sum"), such amount representing the value of the difference between the notional lump sum and the actual lump sum as the Secretary of State determines after taking advice from the scheme actuary.

(6) The amount calculated in accordance with paragraph (5)(a) must be multiplied by the appropriate factor for a person with NPA 60 reckonable service—

- (a) where the pension is a phased retirement pension, if P is under 60 on the relevant date, and
- (b) where the pension is a retirement pension, if Case D or Case E applies to P's NPA 60 reckonable service.

(7) The amount calculated in accordance with paragraph (5)(b) must be multiplied by the appropriate factor for a person with NPA 65 reckonable service—

- (a) where the pension is a phased retirement pension, if P is under 65 on the relevant date, and
- (b) where the pension is a retirement pension, if Case D or Case E applies to P's NPA 65 reckonable service.

(8) Where P was in pensionable employment after reaching the age of 65, such part of the amount calculated in accordance with paragraph (5)(b) as relates to reckonable service before P reached that age must be multiplied by the factor specified in paragraph (9).

(9) The factor is such factor relating to the length of the period (in years and complete months) between the date of P's 65th birthday and the entitlement day for that part of P's retirement pension mentioned in paragraph (5)(b) as the Secretary of State is to determine from time to time after taking advice from the scheme actuary.

(10) For the purpose of paragraph (8), where a transfer value other than one from a comparable United Kingdom scheme is accepted after P is 65, the reckonable service attributable to the transfer value is to be treated as being after P reached that age.

(11) In this regulation—

- (a) "relevant date" has the same meaning as in regulation 57(9) (election to receive phased retirement benefits), and
- (b) the "entitlement day" means the entitlement day referred to in regulation 60 (retirement benefits).

(12) The annual rate of a retirement pension is subject to paragraph 23 of Schedule 13 (National Insurance modification of pensions).

Amount of phased retirement and retirement lump sum

62.—(1) This regulation applies for calculating the amount of phased retirement and retirement lump sums.

(2) The amount of the lump sum of a person (P) is the amount mentioned in paragraph (4) less the total of the benefits mentioned in paragraph (5) previously payable to P other than any already deducted in the calculation of a lump sum (whether under this regulation or regulation 117(5) (person to be treated as electing to receive lump sum in place of pension))

(3) But no lump sum may exceed P's permitted maximum.

(4) The amount is $\frac{3}{80}$ x P's average salary x P's NPA 60 reckonable service to which a Case applies (in years and fractions of a year).

(5) The benefits are—

- (a) any phased retirement lump sum in a case where the phased retirement pension payable with the lump sum ceased to be payable under regulation 59 (cessation of phased retirement pension);
- (b) any ill-health lump sum;
- (c) any total incapacity lump sum;

- (d) any lump sum under regulation 116 (election to receive lump sum in place of pension) other than a lump sum attributable to—
 - (i) a phased retirement pension except where the pension ceased to be payable under regulation 59 (cessation of phased retirement pension), or
 - (ii) an additional pension;
- (e) any short-service incapacity grant, in a case where, after the grant became payable, P re-entered pensionable employment before 1st September 2010.
- (6) The amount calculated in accordance with paragraph (4) must be multiplied by the appropriate factor for a person with NPA 60 reckonable service—
 - (a) where the lump sum is a phased retirement lump sum, if P is under 60 on the relevant date;
 - (b) where the lump sum is a retirement lump sum, if Case D or Case E applies to P’s NPA 60 reckonable service.
- (7) In this regulation—
 - “permitted maximum” must be construed in accordance with paragraph 2 of Schedule 29 to FA 2004;
 - “relevant date” has the same meaning as in regulation 57(9) (election to receive phased benefits).

Reduction of benefits: duplicate pensions

- 63.**—(1) This regulation applies where a person’s reckonable service is attributable to a period of employment which counts towards both—
- (a) phased retirement benefits or retirement benefits under these Regulations, and
 - (b) a benefit (other than a benefit under these Regulations) payable directly or indirectly out of moneys provided by Parliament or from council tax levied by local authorities.
- (2) But this regulation does not apply where the other benefit—
- (a) is subject to reduction under regulation 142 of the Local Government Pension Scheme Regulations 1997(**28**), or
 - (b) is payable under regulation 7 of the Teachers (Compensation for Redundancy and Premature Retirement) Regulations(**29**) 1997.
- (3) Except as provided in paragraphs (4) and (5), the person’s phased retirement benefits or retirement benefits must be reduced by so much as is necessary to secure that A is reduced by B.
- (4) A must not be reduced to less than C.
- (5) A phased retirement pension or retirement pension must not be reduced so that so much of it as is attributable to the double period is below the rate of any equivalent pension benefits attributable to that period.
- (6) In the case of a pension, the reduction must be applied to the amounts in paragraph (5) (a) and (b) of regulation 61 (annual rate of phased retirement and retirement pension) before any multiplication under paragraphs (6), (7) or (8) of that regulation.
- (7) In the case of a lump sum, the reduction must be applied to the amount in paragraph (4) of regulation 62 (amount of phased retirement and retirement lump sum) before any multiplication under paragraph (6) of that regulation.
- (8) In this regulation—

(28) [S.I. 1997/1612](#) revoked but with savings by [S.I. 2008/238](#).

(29) [S.I. 1997/311](#)

A is the actuarial value of the phased retirement or retirement benefits attributable to the double period;

B is the actuarial value of the other benefit attributable to the double period;

C is the actuarial value of the sum of—

- (a) the amount of contributions (including any paid under regulation C9 of TPR 1997 or regulation 19) paid by the person in respect of the double period, and
- (b) interest on those contributions at 3% per annum compounded with yearly rests from the first day of the financial year following that in which the contributions were paid to the date on which retirement benefits became payable to the person;

the “double period” means the period mentioned in paragraph (1);

“local authority” includes a non-metropolitan district council for an area for which there is a county council;

the “other benefit” means the benefit mentioned in paragraph (1)(b) and includes any sum payable, whether as a continuing allowance or as a lump sum, by way of pension, superannuation allowance, compensation for loss of office or otherwise in respect of retirement.

Abatement of retirement pension during further employment

64.—(1) This regulation applies while a person (P) falling within paragraph (2) is employed—

- (a) in pensionable employment, comparable British service or employment which would have been pensionable but for—
 - (i) P having made an election under regulation 9 (election for employment not to be pensionable), or
 - (ii) P having reached the age of 75,
- (b) in part-time employment in a capacity described in paragraphs 1,2 and 4 to 9 of Schedule 2 which is not pensionable employment by reason of the fact that the employment falls within regulation 7(6), but has not made an election under regulation 10(1) (election for employment to be pensionable), or
- (c) in full-time employment which is not pensionable employment by reason of the fact that the employment falls within regulation 7(8), but has not made an election under regulation 10(2)(d).

(2) P falls within this paragraph if—

- (a) retirement benefits have become payable to P, or
- (b) P has elected to receive phased retirement benefits, and neither paragraph (6) nor paragraph (7) of regulation 61 (multiplication of pension by appropriate factor) apply in relation to the phased retirement pension.

(3) But this regulation does not apply in respect of a pension (or part of a pension) which is payable to the person by reason of Case E applying to the person’s reckonable service.

(4) If the person is concurrently both in employment falling within paragraph (1)(a) and in employment falling within paragraph (1)(b), this regulation applies only in respect of the former.

(5) Where this regulation applies—

- (a) if the amount of the person’s salary in the employment during the tax year equals or exceeds the person’s adjusted salary of reference in any tax year, no pension is to be paid in that tax year; and

- (b) in any other case, the pension to which the person is entitled in any tax year is to be reduced if necessary so as to secure that the pension paid during that tax year does not exceed $(A \times P/Q)$,

where—

A is the amount by which the person's salary in the employment during the tax year falls short of that person's adjusted salary of reference,

P is the full annual rate of the person's pension during the tax year in question as increased under PIA 1971 but disregarding the effect of paragraphs (10) or (11), and

Q is the total of—

- (i) the full annual rate of the person's pension,
- (ii) the full annual rate of compensation payable under regulation 7 (mandatory compensation for premature retirement) of the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997(30), and
- (iii) the full annual rate of all compensation payable under regulation 12 (discretionary compensation for premature retirement) of those Regulations,

for the tax year in question, as increased under PIA 1971.

(6) In paragraph (5), the adjusted salary of reference is, or where the person's previous employment was part time, the full time equivalent of—

- (a) the highest salary taken into account in determining the person's average salary under regulation 37 or 38, multiplied by the adjustment factor, or
- (b) (if applicable) the highest salary taken into account in determining the person's average salary under regulation 37 or 38 relating to the person's further employment, multiplied by the adjustment factor,

whichever is the higher.

(7) For the purpose of paragraph (6) the adjustment factor is the amount (if any) by which, immediately before the first day of the employment, any salary referred to in paragraph (6) would have increased if it had been the annual rate of an official pension as defined in section 5(1) of PIA 1971 beginning, and first qualifying for increases under that Act, on the same date as—

- (a) the last day of employment at that salary, in a case where the person's average salary was determined under regulation 37, or
- (b) the pension, in a case where the person's average salary was determined under regulation 38.

(8) Where a pension falls to be reduced under paragraph (5)(b) in any tax year, the Secretary of State is to pay the pension in accordance with regulation 109 (monthly payments) or regulation 110 (quarterly payments) at the rate which is appropriate without taking account of the reduction until the amount to which the pension is to be reduced (on the assumption that the person will remain in employment at the same salary for the remainder of the tax year) has been paid.

(9) Once the appropriate amount of pension has been paid as mentioned in paragraph (8), no further payment is to be made during that tax year unless the person ceases to be in the employment or is in employment at a lower salary in which case the Secretary of State is to pay pension during the remainder of the tax year to the person of such amount and at such times as is necessary in order to secure the result described in paragraph (5).

(10) Where the actual pension paid in any tax year has exceeded the amount which should have been paid by virtue of paragraph (5) ("the excess payment") the pension payable in the subsequent tax year is to be reduced by the excess payment.

(11) In paragraphs (5) and (7) to (10) “pension” means the aggregate of a person’s retirement pension (other than a pension or part of a pension referred to in paragraph (3)) and any phased retirement pension, additional pension or total incapacity pension paid with that pension.

CHAPTER 5

Total incapacity benefits and cessation of ill health pensions etc.

Total incapacity benefits

65.—(1) This regulation applies where—

- (a) an ill-health pension becomes payable to a person (P) because P satisfies Conditions 1, 2 and 3 set out in paragraph 3 of Schedule 7 (Case C: ill-health retirement), and
- (b) P satisfies Conditions A and B.

(2) P satisfies Condition A if P’s ability to carry out any work is impaired by more than 90% and is likely to be impaired by more than 90% permanently.

(3) P satisfies Condition B if immediately before satisfying Condition A—

- (a) P was in pensionable employment,
- (b) P was paying contributions under regulation C9 of TPR 1997 or regulation 19 (election to pay contributions by a person serving in a reserve force), or
- (c) P was taking a period of non-pensionable sick leave, a period of non-pensionable family leave or a career break which, in every case, followed on immediately after a period of pensionable employment.

(4) A total incapacity pension is payable to P from the entitlement day.

(5) Except as otherwise provided in these Regulations, the total incapacity pension is payable for life.

(6) Where P is a pre-2007 entrant, a total incapacity lump sum is payable to P on the entitlement day.

(7) The annual rate of the pension and the amount of the lump sum are to be calculated in accordance with regulation 66 (annual rate of total incapacity pension and amount of total incapacity lump sum).

(8) The entitlement day is the date on which the ill-health pension mentioned in paragraph (1) becomes payable to P.

Annual rate of total incapacity pension and amount of total incapacity lump sum

66.—(1) The annual rate of the total incapacity pension of a person (P) is the sum of—

- (a) the appropriate fraction x P’s average salary x P’s added service (in years and fractions of a year),
- (b) where the amount of a lump sum paid (“the actual lump sum”) is less than the amount which would, apart from paragraph (3), be payable (“the notional lump sum”), such amount representing the value of the difference between the notional lump sum and the actual lump sum as the Secretary of State determines after taking advice from the scheme actuary.

(2) The total incapacity lump sum of a person (P) is $\frac{3}{80}$ x P’s average salary x P’s added service (in years) less any amount referred to in paragraph (4).

(3) But no lump sum may exceed P’s permitted maximum.

(4) Where the total of any benefits referred to in regulation 62(5) which fall to be deducted under regulation 62(2) from any lump sum exceeds the total of—

- (a) any ill health lump sums, previously paid or payable at the same time as the total incapacity lump sum, and
- (b) any total incapacity lump sum previously paid

the balance is to be deducted from the total incapacity lump sum.

(5) The appropriate fraction is—

- (a) where P is a pre-2007 entrant, $\frac{1}{80}$, and
- (b) where P is a person with mixed service or a 2007 or later entrant, $\frac{1}{60}$.

(6) P's added service is one half of the period beginning on the entitlement day and ending on the date on which P reaches—

- (a) where P is a pre-2007 entrant, the age of 60, or
- (b) where P is a person with mixed service or a 2007 or later entrant, the age of 65.

(7) The entitlement day has the same meaning as in regulation 65 (total incapacity benefits).

Cessation of total incapacity pension

67.—(1) A total incapacity pension ceases to be payable to a person (P) if P's ability to carry out any work ceases to be impaired by more than 90%.

(2) Paragraph (1) does not apply if P has reached—

- (a) where P is a pre-2007 entrant, the age of 60, or
- (b) where P is a person with mixed service or a 2007 or later entrant, the age of 65.

(3) For the purpose of paragraph (1), P's ability to carry out any work is to be treated as ceasing to be impaired by more than 90% on the earliest of the following—

- (a) the date on which P enters employment in a capacity mentioned in Schedule 2 (pensionable employment);
- (b) the date on which P engages in work as a teacher (not being employment in such a capacity);
- (c) the date on which P engages in any other form of work unless—
 - (i) P provides the Secretary of State with a certificate from a registered medical practitioner that, in the opinion of the practitioner, P continues to satisfy Condition A set out in regulation 65 (total incapacity benefits) despite engaging in such work, and
 - (ii) the Secretary of State determines that P continues to satisfy that Condition despite engaging in such work.

Cessation and reinstatement of ill-health pension (application received before 6th January 2007)

68.—(1) This regulation applies to—

- (a) an ill-health pension which became payable to a person (P) following an application received by the Secretary of State before 6th January 2007, and
- (b) a pension which becomes payable in accordance with paragraph (5).

(2) A pension to which this regulation applies ceases to be payable if P—

- (a) enters full-time employment in a capacity mentioned in Schedule 2, where the pension became payable before 1st April 1997,

- (b) enters full-time or part-time employment in a capacity mentioned in Schedule 2, where the pension became payable on or after 1st April 1997, or
- (c) otherwise ceases to be incapacitated.
- (3) Paragraph (2) does not apply if P has reached the age of 60.
- (4) Despite paragraph (2), any equivalent pension benefits continue to be payable.
- (5) Where—
 - (a) a pension has ceased to be payable in accordance with paragraph (2), and
 - (b) P has not been in pensionable employment at any time after the pension first became payable

the pension becomes payable again from the day on which P reaches the age of 60 or, if at an earlier date P satisfies condition 4 in paragraph 3(5) of Schedule 7 (ability to carry out work impaired by more than 90%), from that date.

Cessation of ill-health pension (application received on or after 6th January 2007)

69.—(1) This regulation applies to an ill-health pension to which regulation 68 (cessation and reinstatement of ill-health pension (application received before 6th January 2007)) does not apply.

(2) A pension to which this regulation applies ceases to be payable on the earlier of the following—

- (a) the date on which the person to whom it is payable (P) enters employment in a capacity mentioned in Schedule 2;
- (b) the date on which P engages in paid or unpaid work as a teacher (not being employment in such a capacity).
- (3) Paragraph (2) does not apply where P is—
 - (a) a pre-2007 entrant who has reached the age of 60, or
 - (b) a person with mixed service or a 2007 or later entrant who has reached the age of 65.
- (4) Despite paragraph (2)—
 - (a) any equivalent pension benefits continue to be payable, and
 - (b) where P is a person with mixed service who has reached the age of 60 but not the age of 65, that part of the ill-health pension mentioned in regulation 61(5)(a) and (d) (annual rate of phased retirement and retirement pension) continues to be payable.

Calculation of retirement benefits after ill-health pension ceases to be payable

70.—(1) This regulation applies for calculating the retirement benefits of a person (P) if—

- (a) the retirement pension which most recently became payable to P (“the previous pension”) was an ill-health pension,
- (b) the previous pension ceased to be payable under regulation 68 (cessation and reinstatement of ill-health pension (application received before 6th January 2007) or 69 (cessation of ill-health pension (application received on or after 6th January 2007)), and
- (c) P re-entered pensionable employment.
- (2) The annual rate of the retirement pension is made up of—
 - (a) the annual rate of any ill-health pension which became payable before the previous pension and was calculated using an average salary greater than the previous average salary, and
 - (b) the annual rate of a pension calculated in accordance with regulation 61 (annual rate of phased retirement and retirement pension) except as provided in paragraph (4) and (5).

(3) The amount of any retirement lump sum is the amount of a lump sum calculated in accordance with regulation 62 (amount of phased retirement and retirement lump sum) except as provided in paragraphs (4) and (5).

(4) In regulations 61 (annual rate of phased retirement pension and retirement pension) and 62 (amount of phased retirement lump sum and retirement lump sum) references to P's reckonable service must be taken to—

- (a) exclude reckonable service used in the calculation of any pension mentioned in paragraph (2)(a), but
- (b) where the previous pension became payable to P following an application received by the Secretary of State before 6th January 2007, include any enhanced period determined in accordance with regulation 71.

(5) Where P's average salary on the date on which retirement benefits become payable ("the final average salary") is less than the average salary at the date on which the previous pension became payable ("the earlier average salary") then the average salary for the purposes of regulations 61 and 62 is—

- (a) the earlier average salary, in relation to P's reckonable service used in the calculation of P's previous pension, and
- (b) the final average salary in relation to the balance of P's reckonable service.

(6) For the purposes of paragraph (5) P's reckonable service used in the calculation of P's previous pension does not include any increase in reckonable service under regulation E8 of TPR 1997, or regulation 71.

(7) Where paragraph (5) applies and any phased retirement pension is payable to P then for the purpose of paragraph 13 of Schedule 7—

- (a) where the phased retirement pension became payable before the previous pension became payable the reckonable service taken into account in the calculation of that phased retirement pension is to be treated as reckonable service referred to in paragraph (5)(a), and
- (b) where the phased retirement pension became payable after the previous pension became payable—
 - (i) the reckonable service taken into account in the calculation of that phased retirement pension is to be treated as reckonable service referred to in paragraph (5)(b), but
 - (ii) where the reckonable service taken into account in the calculation of that phased retirement pension is more than the reckonable service referred to in paragraph (5)(b)—
 - (aa) no reckonable service falls within paragraph (5)(b), and
 - (bb) the balance of reckonable service taken into account in the calculation of that phased retirement pension is to be treated as reckonable service referred to in paragraph (5)(a).

Calculation of retirement benefits after ill-health pension ceases to be payable: supplemental

71.—(1) This regulation applies where regulation 70(4)(b) applies.

(2) In this regulation—

- (a) "P's assumed pensionable employment end date" means the earlier of—
 - (i) the date on which the pensionable employment of a person (P) would have ended if the further employment in respect of which the pension is payable had begun on the date when P fell within Case C in regulation E4 of TPR 1997 (as a result of which the previous pension became payable), and

- (ii) P's 60th birthday,
 - (b) P's "relevant service" is so much of P's reckonable service as does not consist of periods—
 - (i) set out in sub-paragraphs (c) or (d) of regulation 41(1) (past added years), or
 - (ii) which count as reckonable service by virtue of the application to P of regulation 7 of TPR 1976 (war service), and
 - (c) "the previous pension" is the previous pension referred to in regulation 70(1)(a).
- (3) For the purposes of this regulation, P is treated as having been in pensionable employment during any period during which P was paying contributions under regulation C9 of TPR 1997 or under regulation 19.
- (4) P's reckonable service is treated as having been increased by the period specified in paragraph (4) or paragraph (5) (as appropriate) but this is subject to regulation 42(d) (limitation of reckonable service to 45 years).
- (5) If P's relevant service is less than 10 years the period is the shorter of—
- (a) the length of relevant service, and
 - (b) the period beginning on P's assumed pensionable employment end date and ending immediately before P's 65th birthday.
- (6) If P's relevant service is 10 years or more, the period is the longer of period A and period B.
- (7) Period A in paragraph (6) is the shortest of—
- (a) the period by which P's relevant service falls short of 40 years,
 - (b) the period beginning on P's assumed pensionable employment end date and ending immediately before P's 60th birthday, and
 - (c) 6 years and 243 days.
- (8) Period B in paragraph (6) is so much of the period beginning on P's assumed pensionable employment end date and ending immediately before P's 65th birthday as would not cause P's reckonable service to be increased to more than 20 years.
- (9) Where P is a person with relevant mixed service the increase in P's reckonable service arising from this regulation is to be treated, for the purpose of regulation 48 (person with mixed service: meaning and normal pension age), as having occurred after the disqualifying break.
- (10) In paragraph (9) P is a person with relevant mixed service where—
- (a) the previous pensionable employment (which gave rise to the ill-health pension referred to in regulation 68 or 69) ceased before a disqualifying break, and
 - (b) P's re-entry into pensionable employment referred to in regulation 70(1)(c) occurred after that disqualifying break.

Reduction of ill health pension and total incapacity pension

72.—(1) This regulation applies where—

- (a) total incapacity benefits are payable to a person (P), and
- (b) the ill health retirement benefits which are payable to P at the same time are increased pursuant to regulation 71.

(2) If it appears to the Secretary of State that the total of P's added service referred to in regulation 66 and any increased reckonable service referred to in regulation 71 is excessive in the light of the length of the period between the date on which the total incapacity benefits became payable to P and the date on which Case A would have applied to any of P's reckonable service (if regulation 65 had not applied), the Secretary of State may determine that—

- (a) P's total incapacity benefits, or
- (b) that part of P's ill health retirement benefits which arise from the application of regulation 71, or
- (c) both P's total incapacity benefits and the part of P's ill health retirement benefits referred to in sub-paragraph (b)

are to be reduced to such amount as the Secretary of State considers appropriate.

(3) The Secretary of State may not make a determination under paragraph (2) which would have the effect that the aggregate of the values of P's total incapacity benefits and P's ill health retirement benefits would be less than the aggregate of the values of—

- (a) P's incapacity benefits if they had not been reduced under this regulation, and
- (b) P's ill health retirement benefits if they had been calculated without any increase under regulation 71.

(4) The Secretary of State must take advice from the scheme actuary before making any determination under this regulation.

CHAPTER 6

Additional pensions

Election to receive additional pension with phased retirement pension

73.—(1) This regulation applies to the AP beneficiary of an AP election who makes an election to receive phased retirement benefits under regulation 57(7) (election to receive phased retirement benefits).

(2) A person to whom this regulation applies may elect to receive an additional pension with the phased retirement pension by giving written notice to the Secretary of State at the same time as the notice required under regulation 57(7).

(3) Where a person (P) makes an election under paragraph (2), an additional pension is payable to P in respect of each AP election of which P is an AP beneficiary from the entitlement day.

(4) The entitlement day is the day on which the phased retirement pension becomes payable.

(5) Except as otherwise provided in these Regulations, the additional pension is payable for life.

(6) The annual rate of the pension is the amount with which P is credited under Schedule 4 in respect of the AP election multiplied by the factor mentioned in paragraph (7), if that factor is greater than 1, and by the factor mentioned in paragraph (8).

(7) The factor is $RPI1/RPI2$, where—

RPI1 is the retail prices index for the penultimate month before the month which includes the day before the day on which the pension is deemed to begin for the purposes of PIA 1971 (see section 8(2) of that Act), and

RPI2 is the retail prices index for the month which includes the start date.

(8) The factor is—

- (a) where P is a pre-2007 entrant who has not reached the age of 60 by the entitlement day, the appropriate factor for a person with NPA 60 reckonable service;
- (b) where P is a pre-2007 entrant who has not reached the age of 65 by the entitlement day and the AP election was accepted after P reached the age of 60, the appropriate factor for a person with NPA 65 reckonable service;

- (c) where P is a person with mixed service who has not reached the age of 60 by the entitlement day and the AP election was accepted before P became a person with mixed service, the appropriate factor for a person with NPA 60 reckonable service;
 - (d) where P is a person with mixed service who has not reached the age of 65 by the entitlement day and the AP election was accepted after P became a person with mixed service, the appropriate factor for a person with NPA 65 reckonable service;
 - (e) where P is a 2007 or later entrant who has not reached the age of 65 by the entitlement day, the appropriate factor for a person with NPA 65 reckonable service;
 - (f) in all other cases, 1.
- (9) In this regulation—
- “AP election” means an election accepted by the Secretary of State under Schedule 4 (contributions for additional pension);
 - “AP beneficiary” has the same meaning as in Schedule 4;
 - “start date” has the same meaning as in Schedule 4.

Cessation of additional pension paid with phased retirement pension

74.—(1) This regulation applies where an additional pension becomes payable to a person with a phased retirement pension under regulation 73 (election to receive additional pension with phased retirement pension).

(2) Where the phased retirement pension ceases to be payable in accordance with regulation 59 (cessation of phased retirement pension), the additional pension also ceases to be payable from the same date.

Additional pension paid with retirement pension

75.—(1) This regulation applies to the AP beneficiary of one or more AP elections to whom a retirement pension becomes payable.

(2) An additional pension is payable to a person to whom this regulation applies (P) in respect of each AP election of which P is an AP beneficiary from the entitlement day.

(3) The entitlement day is the day on which the retirement pension becomes payable.

(4) If P is a person with mixed service and Case A applies to P’s NPA 60 reckonable service and another Case applies to P’s NPA 65 reckonable service—

- (a) the entitlement day for an additional pension in respect of an AP election accepted before P became a person with mixed service is the entitlement day for Case A, and
- (b) the entitlement day for an additional pension in respect of an AP election accepted after P became a person with mixed service is the entitlement day for the Case which applies to P’s NPA 65 reckonable service.

(5) Except as otherwise provided in these Regulations, the additional pension is payable for life.

(6) Paragraph (2) does not apply to an AP election if an additional pension attributable to the AP election is payable to P under regulation 73 (election to receive additional pension with phased retirement pension).

(7) Where—

- (a) P is a person with mixed service,
- (b) the retirement pension is payable because Case A applies to P’s NPA 60 reckonable service, and
- (c) no other Case applies to P’s NPA 65 reckonable service,

paragraph (2) does not apply to an AP election accepted after P became a person with mixed service.

(8) Where—

- (a) P is a person with mixed service, and
- (b) the retirement pension is payable because a Case applies to P's NPA 65 reckonable service,
- (c) a retirement pension is payable to P because Case A applies to P's NPA 60 reckonable service (including a case where the rate of the pension has been reduced to zero under regulation 64 (abatement of retirement pension during further employment) or 121 (forfeiture of benefits)),

paragraph (2) does not apply to an AP election accepted before P became a person with mixed service.

(9) The annual rate of the pension is the amount with which P is credited under Schedule 4 in respect of the AP election multiplied by the factor mentioned in paragraph (10) if that factor is greater than 1 and by the factor mentioned in paragraph (11).

(10) The factor is $RPI1/RPI2$, where—

RPI1 is the retail prices index for the penultimate month before the month which includes the day before the day on which the pension is deemed to begin for the purposes of PIA 1971 (see section 8(2) of that Act), and

RPI2 is the retail prices index for the month which includes the start date.

(11) The factor is—

- (a) where P is a pre-2007 entrant and the retirement pension is payable because Case D or E applies to P's NPA 60 reckonable service, the appropriate factor for a person with NPA 60 reckonable service;
- (b) where P is a pre-2007 entrant who has not reached the age of 65 by the entitlement day and the AP election was accepted after P reached the age of 60, the appropriate factor for a person with NPA 65 reckonable service;
- (c) where P is a person with mixed service, the retirement pension is payable because Case D or E applies to P's NPA 60 reckonable service and the AP election was accepted before P became a person with mixed service, the appropriate factor for a person with NPA 60 reckonable service;
- (d) where P is a person with mixed service, the retirement pension is payable because Case D or E applies to P's NPA 65 reckonable service and the AP election was accepted after P became a person with mixed service, the appropriate factor for a person with NPA 65 reckonable service;
- (e) where P is a 2007 or later entrant, and the retirement pension is payable because Case D or E applies to P's NPA 65 reckonable service, the appropriate factor for a person with NPA 65 reckonable service;
- (f) in all other cases, 1.

(12) In this regulation—

“AP election” means an election accepted by the Secretary of State under Schedule 4 (contributions for additional pensions);

“AP beneficiary” has the same meaning as in Schedule 4;

“start date” has the same meaning as in Schedule 4.

Cessation of additional pension paid with ill-health pension

76.—(1) This regulation applies where an additional pension becomes payable to a person (P) with an ill-health pension under regulation 75 (additional pension paid with retirement pension).

(2) Where the ill-health pension, or a part of the ill-health pension, ceases to be payable under regulation 69 (cessation of ill-health pension (application received on or after 6th January 2007)), the additional pension also ceases to be payable on the same date.

(3) But where P is a person with mixed service who has reached the age of 60 but not the age of 65, paragraph (2) does not apply to an additional pension attributable to an AP election accepted before P became a person with mixed service.

(4) In paragraph (3) “AP election” has the same meaning as in regulation 75 (additional pension paid with retirement pension).

CHAPTER 7**Other benefits****Short-service annuity**

77.—(1) This regulation applies where the contributions of a person who has not been in pensionable employment at any time after 5th April 1980 cannot be repaid under regulation 22(2) because the salary on which contributions were payable exceeded £5,000.

(2) A short-service annuity is payable to the person for life from the date of the person’s 60th birthday.

(3) The annual rate of the annuity is the actuarial equivalent of the person’s contributions (calculated in accordance with regulation 23) as at the date of the person’s 60th birthday.

Short-service annuity: unauthorised payments

78.—(1) This regulation applies where the repayment of a person’s contributions under regulation 22 is not made because of regulation 124 (general prohibition on unauthorised payments) but where the person would otherwise be entitled to repayment of contributions.

(2) A short-service annuity is payable to the person (P) from the date specified by P in P’s application which must be no earlier than 6 weeks after the date on which P’s application is made.

(3) Except as otherwise provided in these Regulations, the annuity is payable for life.

(4) The annual rate of the annuity is the actuarial equivalent of the contributions which would have been repaid.

Short-service serious ill -health grant

79.—(1) This regulation applies to a person (P) if—

- (a) P was in pensionable employment for at least 12 months,
- (b) P is not qualified for retirement benefits or qualified for retirement benefits following further employment,
- (c) P ceases to be in pensionable employment because P satisfies the incapacity condition,
- (d) P’s application under regulation 107 (payment of benefits on application to Secretary of State) is made within 6 months after the date on which P’s pensionable employment ceases, and
- (e) P has a life expectancy of less than a year.

(2) A short-service serious ill-health grant is payable to a person to whom this regulation applies.

- (3) But no grant may be paid to a person who is 75 or over.
- (4) The amount of the grant is P's average salary/12 x P's reckonable service (in years and fractions of a year).
- (5) For the purpose of this regulation, a person satisfies the incapacity condition if the person is incapacitated and is likely to be incapacitated permanently.

Admitted service benefits

- 80.**—(1) This regulation applies to a person who falls within paragraph (2) or paragraph (3).
- (2) A person falls within this paragraph if—
 - (a) the person has admitted service of any amount, and
 - (b) the person is qualified for retirement benefits.
 - (3) A person falls within this paragraph if—
 - (a) the person has admitted service of at least 5 years, but
 - (b) the person is not qualified for retirement benefits.
 - (4) An admitted service pension is payable to a person to whom this regulation applies (P) from the entitlement day.
 - (5) Except as otherwise provided in these Regulations, the pension is payable for life.
 - (6) An admitted service lump sum is payable to P on the entitlement day.
 - (7) Paragraph (6) does not apply if P complies with paragraphs (3) and (4) of regulation 107 (payment of benefits on application to Secretary of State) after P reaches the age of 75.
 - (8) The entitlement day is—
 - (a) where P falls within paragraph (2), the day on which P's retirement pension becomes payable, and
 - (b) where P falls within paragraph (3), the day of P's 60th birthday or, if P is in pensionable employment on P's 60th birthday, the day after P ceases to be in pensionable employment.
 - (9) In these Regulations "admitted service" means service to which Part 8 of TSR 1967 applied immediately before 1st May 1975.

Annual rate of admitted service pension and amount of admitted service lump sum

- 81.**—(1) This regulation applies for calculating the annual rate of the admitted service pension and the amount of the admitted service lump sum of a person to whom regulation 80 (admitted service benefits) applies (P).
- (2) The annual rate of P's admitted service pension is the sum of—
 - (a) $1/80 \times S \times AS + X/5$, and
 - (b) where an admitted service lump sum would, apart from regulation 80(7) be payable to P, such amount representing the value of that lump sum as the Secretary of State shall determine after taking advice from the scheme actuary.
 - (3) The amount of P's admitted service lump sum is $1/30 \times S \times AS1 + 3/80 \times S \times AS2$.
 - (4) The amounts calculated in accordance with paragraphs (2) and (3) must be multiplied by the appropriate factor for a person with NPA 60 reckonable service where—
 - (a) P falls within paragraph (2) of regulation 80 (admitted service benefits), and
 - (b) P's retirement pension is paid because Case D or E applies to P's NPA 60 reckonable service.

(5) In this regulation—

AS is the length of P’s admitted service (in years and fractions of a year);

AS1 is the length of P’s admitted service (in years and fractions of a year) before 1st April 1963;

AS2 is the length of P’s admitted service (in years and fractions of a year) after 31st March 1963;

S is the average annual rate of P’s salary during admitted service;

X is so much of $1/80 \times S \times AS$ as is attributable to admitted service before 1st April 1962.

PART 8

Death grants

Person to whom death grant is payable

82.—(1) A person (“the appointor”) may nominate another individual (“the nominee”) for the purpose of this Part by giving written notice to the Secretary of State.

(2) A nomination under paragraph (1) ceases to have effect if—

- (a) the appointor revokes the nomination by giving written notice to the Secretary of State,
- (b) the appointor subsequently nominates a different person in place of the nominee, or
- (c) the nominee dies.

(3) The nominee is the appointor’s death grant beneficiary for the purpose of this Part if the nomination has effect at the date of the appointor’s death.

(4) Where the appointor nominates more than one individual under paragraph (1), the notice must state in relation to each nominee—

- (a) the share of the death grant to be paid to the nominee, and
- (b) whether, if the nominee predeceases the appointor, the Secretary of State must treat the notice as stating that the deceased nominee’s share of the death grant be paid—
 - (i) to the surviving nominee or, if there is more than one, to the surviving nominees in accordance with paragraph (5), or
 - (ii) to the appointor’s personal representatives as part of the appointor’s estate.

(5) Where the share of the deceased’s nominee’s death grant is to be paid to the surviving nominees it is to be paid to them in shares such that the proportion which each surviving nominee’s share bears to each of the other surviving nominee’s shares is the same as it was in the nomination.

(6) Any death grant paid under this Part must be paid to the appointor’s death grant beneficiary or, if more than one, death grant beneficiaries in the shares determined in accordance with paragraphs (4) and (5).

(7) But where there is no death grant beneficiary, the death grant must be paid to the appointor’s surviving spouse, surviving civil partner or surviving nominated partner or, if there is no such person, to the appointor’s personal representatives as part of the appointor’s estate.

Death grant: death in service

83.—(1) A death grant may be paid on the death of a person (D) in any of the following circumstances—

- (a) D dies in pensionable employment;

- (b) D dies during a period in respect of which D is paying contributions under regulation C9 of TPR 1997 or regulation 19 (election to pay contributions by a person serving in a reserve force);
- (c) D ceases to be in pensionable employment because D is incapacitated and dies within 12 months after the cessation of the pensionable employment without returning to employment in a capacity mentioned in Schedule 2;
- (d) the period in respect of which D is paying contributions under regulation 19 ends because D is incapacitated, and D dies within 12 months after the end of that period without returning to employment in a capacity mentioned in Schedule 2;
- (e) D dies while on non-pensionable family leave which immediately follows a period of pensionable employment.

(2) Paragraph (1) does not apply if a retirement pension, short-service incapacity grant or short-service serious ill-health grant, calculated in every case by reference to all of D's reckonable service at the date of D's death, became payable before D's death.

(3) For the purpose of paragraph (2) an ill-health pension does not become payable before a person's death unless payment is initiated before the person's death.

(4) The amount of the death grant is 3 times D's average salary less the total of the following benefits previously payable to D other than any already deducted in the calculation of a lump sum—

- (a) any phased retirement lump sum;
- (b) any retirement lump sum;
- (c) any total incapacity lump sum;
- (d) any lump sum under regulation 116 (election to receive lump sum in place of part of pension) other than a lump sum attributable to an additional pension;
- (e) any short-service incapacity grant;
- (f) any short-service serious ill-health grant.

Death grant: death in service (further employment)

84.—(1) If a person (D) dies after entering further employment, regulation 83 (death grant: death in service) applies with the following modifications.

(2) In paragraph (2) the reference to a retirement pension is a reference to a retirement pension paid in respect of further employment which D entered most recently ("the last further employment").

(3) In paragraph (4) the reference to D's average salary is a reference to average salary in respect of the last further employment (but the reference to benefits previously payable to D is a reference to benefits in respect of the last further employment and all previous employments).

Death grant: death out of service

85.—(1) A death grant may be paid on the death of a person (D) who was in pensionable employment at any time before D's death.

(2) Paragraph (1) does not apply if—

- (a) a death grant may be paid under regulation 83 (death grant: death in service), or
- (b) a retirement pension, short-service incapacity grant or short-service serious ill-health grant, calculated in every case by reference to all of D's reckonable service at the date of D's death, became payable before D's death.

(3) For the purpose of paragraph (2) an ill-health pension does not become payable before a person's death unless payment is initiated before the person's death.

(4) D falls within this paragraph if—

- (a) D was in pensionable employment at any time after 31st March 1972, and
- (b) D had reckonable service of at least 2 years and, if D was in pensionable employment on or after 1st November 1988, D was qualified for retirement benefits.

(5) If D falls within paragraph (4) and no adult pension becomes payable on D's death, the amount of the death grant is the greater of—

- (a) the amount mentioned in paragraph (8), and
- (b) the amount mentioned in paragraph (11).

(6) If D falls within paragraph (4) and an adult pension becomes payable on D's death, the amount of the death grant is the amount mentioned in paragraph (8).

(7) If D does not fall within paragraph (4), the amount of the death grant is the amount mentioned in paragraph (11).

(8) The amount is $\frac{3}{80} \times D$'s average salary \times D's reckonable service (in years (and fractions of a year)) less the total of the following benefits previously payable to D other than any already deducted in the calculation of a lump sum—

- (a) any phased retirement lump sum in a case where the phased retirement pension payable with the lump sum ceased to be payable under regulation 59 (cessation of phased retirement pension);
- (b) any retirement lump sum;
- (c) any total incapacity lump sum;
- (d) any lump sum under regulation 116 (election to receive lump sum in place of pension) other than a lump sum attributable to—
 - (i) a phased retirement pension except where the pension ceased to be payable under regulation 59 (cessation of phased retirement pension), or
 - (ii) an additional pension;
- (e) any short-service incapacity grant, in a case where, after the grant became payable, D either did not re-enter pensionable employment or re-entered pensionable employment before 1st September 2010.

(9) In paragraph (8)—

- (a) the reference to D's reckonable service does not include a reference to reckonable service taken into account in the calculation of a phased retirement pension except where the pension ceased to be payable under regulation 59 (cessation of phased retirement pension);
- (b) where D was a person with mixed service to whom a pension mentioned in paragraph (10) had become payable—
 - (i) the reference to D's reckonable service is a reference to NPA 65 reckonable service, and
 - (ii) the reference to benefits previously payable to D does not include a reference to benefits calculated by reference to NPA 60 reckonable service.

(10) The pensions are—

- (a) a retirement pension payable because Case A applied to D's NPA 60 reckonable service;
- (b) where D was 60 or over, an ill-health pension, or any part of such a pension, calculated by reference to D's NPA 60 reckonable service.

(11) The amount is an amount equal to a refund of D's contributions (calculated in accordance with regulation 23) paid in respect of any reckonable service which is not taken into account in the calculation of benefits.

Death grant: death out of service (further employment)

86.—(1) If a person (D) dies having been in further employment, regulation 85 (death grant: death out of service) applies with the following modifications.

(2) In paragraph (2) the reference to a retirement pension is a reference to a retirement pension paid in respect of further employment which D entered most recently ("the last further employment").

(3) For paragraph (4) substitute—

“(4) D falls within this paragraph if D was qualified for retirement benefits following further employment.”.

(4) In paragraph (8) the reference to D's average salary, D's reckonable service and benefits previously payable to D is a reference to average salary, reckonable service and benefits in respect of the last further employment.

(5) In paragraph (11) the reference to D's contributions is to a reference to contributions in respect of the last further employment.

Death grant: death of pensioner

87.—(1) This regulation applies to the following pensions—

- (a) a phased retirement pension;
- (b) a retirement pension;
- (c) a total incapacity pension;
- (d) an additional pension.

(2) But this regulation does not apply to the following pensions—

- (a) a phased retirement pension which ceased to be payable under regulation 59 (cessation of phased retirement pension);
- (b) an ill-health pension, or that part of such a pension, which ceased to be payable under regulation 68 (cessation and reinstatement of ill-health pension (application received before 6th January 2007)) or regulation 69 (cessation of ill-health pension (application received on or after 6th January 2007)).
- (c) an additional pension which became payable with a pension mentioned in sub-paragraphs (a) and (b);
- (d) a total incapacity pension which ceased to be payable under regulation 67 (cessation of total incapacity pension).

(3) A death grant may be paid on the death of a person (D) if—

- (a) a pension to which this regulation applies had become payable before D's death, and
- (b) AR is greater than AP.

(4) For the purpose of paragraph (3) the following pensions do not become payable before a person's death unless payment is initiated before the person's death—

- (a) an ill-health pension;
- (b) an additional pension paid with an ill-health pension;
- (c) a total incapacity pension.

- (5) AR is 5 times the annual rate of the pension at the date of D's death.
- (6) AP is the amount payable to D since the pension became payable.
- (7) For the purpose of calculating AR and AP, any amount by which a pension was reduced by regulation 63 (reduction of benefits: duplicate pensions) or 64 (abatement of retirement pension during further employment) is to be treated as being payable.
- (8) The amount of the death grant is AR-AP.

PART 9

Family benefits

Introduction

- 88.** This Part makes provision for the payment of—
- (a) adult pensions;
 - (b) additional pensions for surviving adults;
 - (c) child pensions.

Family benefits (further employment)

89.—(1) For the purpose of calculating benefits under this Part in respect of each period after a person (P) enters further employment, P is to be treated as if P entered pensionable employment for the first time on entering the further employment.

- (2) Where P—
- (a) ceases to be in further employment (“the first further employment”) and satisfies the condition for retirement in relation to the first further employment, but
 - (b) re-enters further employment (“the second further employment”) before making an application under regulation 107 (payment of benefits on application to Secretary of State) in relation to the first further employment

the first further employment and the second further employment are treated as a single period of further employment.

(3) This regulation is subject to paragraph 22 of Schedule 13 (further employment commencing before 1st April 1997).

Nomination of surviving nominated partner

90.—(1) A person (A) may nominate another person (B) to receive a pension by giving the Secretary of State a declaration signed by both A and B that the condition in paragraph (2) is satisfied.

- (2) The condition is that—
- (a) A is able to marry, or form a civil partnership with, B,
 - (b) A and B are living with each other as if they were husband and wife or civil partners,
 - (c) neither A nor B is living with a third person as if they were husband and wife or civil partners, and
 - (d) either B is financially dependent on A or A and B are financially interdependent.
- (3) A nomination ceases to have effect if—
- (a) either A or B gives written notice of revocation to the Secretary of State,

- (b) A makes a subsequent nomination under this regulation,
 - (c) either A or B marries, forms a civil partnership or lives with a third person as if they were husband and wife or civil partners, or
 - (d) B dies.
- (4) B is A's surviving nominated partner if—
- (a) the nomination has effect at the date of A's death, and
 - (b) the condition in paragraph (2) was satisfied for a continuous period of at least 2 years ending on A's death.

Nomination of surviving nominated beneficiary

91.—(1) A person (A) may nominate another person (B) to receive a pension by giving written notice to the Secretary of State if Conditions 1 and 2 are satisfied.

(2) Condition 1 is that A has reckonable service which has not been used to calculate a retirement pension payable to A.

(3) Condition 2 is that—

- (a) A is neither married nor a civil partner,
 - (b) no nomination made by A under regulation 90 (nomination of surviving nominated partner) has effect,
 - (c) B is A's parent, step-parent, brother or sister,
 - (d) B is neither married nor a civil partner,
 - (e) where B is A's parent, brother or sister, either B has never married nor formed a civil partnership or B is widowed or a surviving civil partner,
 - (f) where B is A's step-parent, B is widowed or a surviving civil partner,
 - (g) where B is A's brother or sister, B is not an eligible child of A,
 - (h) B is not living with another person as if they were husband and wife or civil partners, and
 - (i) B is wholly or mainly financially dependent on A.
- (4) A nomination ceases to have effect if—
- (a) A gives written notice of revocation to the Secretary of State,
 - (b) A makes a subsequent nomination under this regulation,
 - (c) A makes a nomination under regulation 90 (nomination of surviving nominated partner),
 - (d) either A or B marries or forms a civil partnership,
 - (e) B begins to live with another person as if they were husband and wife or civil partners, or
 - (f) B dies.
- (5) B is A's surviving nominated beneficiary if, at the date of A's death—
- (a) the nomination has effect, and
 - (b) Condition 2 is satisfied.

Meaning of “surviving adult”

92. In these Regulations the “surviving adult” of a person who has died means the deceased's widow, widower, surviving civil partner, surviving nominated partner or surviving nominated beneficiary.

Meaning of “eligible child”

93.—(1) For the purpose of these Regulations, a person (C) is the “eligible child” of another person (D) if—

- (a) (i) C is a child of D born during D’s lifetime or within 12 months after D’s death,
- (ii) C was adopted by D, or
- (iii) C was accepted by D as a member of the family and was wholly or mainly financially dependent on D at the date of D’s death;
- (b) C is neither married nor a civil partner and has never married nor formed a civil partnership; and
- (c) C satisfies any of Conditions 1 to 3.

(2) Condition 1 is that C is under 17.

(3) Condition 2 is that—

- (a) C is 17 or over and under 23,
- (b) C is receiving full-time education, and
- (c) C has received full-time education since reaching the age of 17 without a break.

(4) Condition 3 is that C—

- (a) C is incapable of earning a livelihood by reason of physical or mental impairment,
- (b) C was dependent on D at the date of the D’s death because of that impairment, and
- (c) C is not wholly maintained out of money provided by Parliament or raised by council tax by a local authority.

(5) For the purpose of Condition 2—

- (a) a person who takes no more than one break not exceeding a year or such longer period as the Secretary of State may determine in the circumstances of the particular case is not to be treated as ceasing to receive full-time education;
- (b) a person who ceases to receive full-time education is to be treated as receiving it up to and including the week which includes whichever of the following days occurs first after the end of the term in which the person ceases to receive it—
 - (i) the first Monday in January,
 - (ii) the first Monday after Easter Monday,
 - (iii) the first Monday in September.

(6) For the purpose of Condition 3 “local authority” includes a non-metropolitan district council for an area for which there is a county council.

(7) For the purpose of this regulation, a person is to be treated as receiving full-time education if the person attends a course of full-time vocational training of not less than 2 years’ duration.

(8) For the purpose of determining whether a person is the eligible child of a person who was not in pensionable employment on or after 1st May 1994, omit paragraph (3)(c).

(9) For the purpose of determining whether a person is the eligible child of a person who was entitled to payment of retirement benefits under regulation E4 of TPR 1997 on 5th April 2006 or whether a child (as defined in regulation E22 of those Regulations) to whom a pension was payable on that date is an eligible child—

- (a) in paragraph (1)(a)(iii), omit “financially”;
- (b) in paragraph (3)(a), omit “and under 23”;

- (c) in paragraph (4)(b) after “that impairment” insert “or became so incapable while satisfying Condition 1 or Condition 2”.

Adult pensions

- 94.**—(1) This regulation applies on the death of a person (D) if—
- (a) D was in pensionable employment after 31st March 1972, and
 - (b) D had adult pension qualification service of—
 - (i) at least 2 years, where D was in pensionable employment at any time after 5th April 1988, or
 - (ii) at least 5 years, where D was not in pensionable employment after 5th April 1988.
- (2) For the purpose of calculating benefits in respect of a period after D entered further employment, paragraph (1) has effect as if for sub-paragraph (b) there were substituted—
- “(b) D was qualified for retirement benefits following further employment.”.
- (3) An adult pension is payable to D’s surviving adult from the day after the date of D’s death.
- (4) Except as otherwise provided in these Regulations, the pension is payable for life.
- (5) D falls within this paragraph if—
- (a) D was not in pensionable employment after 31st December 2006, or
 - (b) D did not pay contributions under regulation C9 of TPR 1997 or regulation 19 (election to pay contributions by a person serving in a reserve force) in respect of a period after that date.
- (6) If D falls within paragraph (5), the pension ceases to be payable if D’s surviving adult marries, forms a civil partnership, or lives with another person as if they were husband and wife or civil partners.
- (7) Paragraph (6) does not apply—
- (a) if the Secretary of State determines that paragraph (6) does not apply in the circumstances of the particular case;
 - (b) to so much of any pension as is payable in respect of section 9(2B) rights to a widow or widower whose entitlement arose from a death occurring before 5th December 2005 and who forms a civil partnership or lives with another person as if they were civil partners;
 - (c) where D dies in service, as a phased retirement pensioner or as a retirement pensioner, during the first 3 months after D’s death.
- (8) The annual rate of the pension is to be calculated in accordance with regulations 95 (adult pensions: short-term rate) and 96 (adult pensions: long-term rate).
- (9) Schedule 8 (adult pension qualification service) has effect for determining D’s adult pension qualification service.

Adult pensions: short-term rate

- 95.**—(1) The annual rate of an adult pension which becomes payable on the death of a person (D) is to be calculated in accordance with this regulation during the first 3 months after D’s death.
- (2) The annual rate of the adult pension is made up of the following—
- (a) where D dies in service and falls within paragraph (2)(a) or (b) of regulation 100 (short-term rate of adult and child pensions: supplemental), the annual rate of D’s contributable salary on D’s last day in pensionable employment, disregarding any reduction by reason of sick leave or maternity, paternity or adoption leave;

- (b) where D dies in service and falls within paragraph (2)(c) or (d) of regulation 100 (short-term rate of adult and child pensions: supplemental), the annual rate, at the date of D's death, of the notional salary mentioned in regulation C9(7) of TPR 1997 or, as the case may be, regulation 19(8);
 - (c) where D dies as a phased retirement pensioner, the annual rate at the date of D's death of any phased retirement pension;
 - (d) where D dies as a retirement pensioner, the annual rate at the date of D's death of any retirement pension.
- (3) Where—
- (a) D does not die in service, or die as a phased retirement pensioner or as a retirement pensioner, or
 - (b) where the annual rate of the adult pension calculated in accordance with paragraph (2) is smaller than the annual rate calculated in accordance with regulation 96 (adult pensions: long-term rate),

the annual rate of the adult pension is the same as the annual rate calculated in accordance with that regulation.

Adult pensions: long-term rate

96.—(1) Except as provided in regulation 95 (adult pensions: short-term rate), the annual rate of an adult pension is $1/160 \times$ the average salary of the person (D) on whose death the pension is payable \times D's family benefit service (in years and fractions of a year).

(2) But where a pension-sharing order has taken effect, the amount of the pension must be reduced by the same proportion by which D's retirement benefits were reduced or would have been reduced if they had been payable at the date of D's death.

(3) Where paragraph 27 of Schedule 5 applies and a person entitled to limit the amount of the deduction or lump sum has done so, the retrospective salary increase is not to be taken into account in calculating D's average salary for the purpose of paragraph (1).

(4) Part 1 of Schedule 9 (family benefit service) has effect for determining D's family benefit service.

Child pensions

97.—(1) This regulation applies on the death of a person (D) if—

- (a) D was in pensionable employment at any time after 31st March 1972, and
- (b) D was qualified for retirement benefits or qualified for retirement benefits following further employment.

(2) A child pension is payable to an eligible child of D from the day after the date of D's death.

(3) But where child pensions payable on the death of more than two persons would, apart from this paragraph, be payable to an eligible child, the only pensions payable to that child are to be the pensions payable on the death of the two persons whose death results in pensions of the greatest value becoming payable.

(4) The pension is not payable—

- (a) while an eligible child is taking a break (as mentioned in paragraph (5)(a) of regulation 93 (meaning of "eligible child")) from full-time education or a course of full-time vocational training of not less than 2 years' duration;
- (b) while an eligible child attending such a course of full-time vocational training is being paid at a rate which equals or exceeds the annual rate at which an official pension within

the meaning of section 5(1) of PIA 1971 would be payable if the pension had begun, and first qualified for increases under that Act on 1st April 2010 and had then been payable at an annual rate of £2675.

(5) The pension ceases to be payable when the person to whom it was payable ceases to be an eligible child.

(6) Where D dies in service, or dies as a phased retirement pensioner or as a retirement pensioner, paragraphs (4) and (5) do not apply while the annual rate of the child pension is calculated in accordance with regulation 98 (child pensions: short-term rate).

(7) The annual rate of the pension is to be calculated in accordance with regulations 98 (child pensions: short-term rate) and 99 (child pensions: long-term rate).

Child pensions: short-term rate

98.—(1) The annual rate of a child pension which becomes payable on the death of a person (D) is to be calculated in accordance with this regulation during the following periods—

- (a) where no adult pension becomes payable on D's death, the first 6 months after D's death;
- (b) where an adult pension becomes payable on D's death and continues to be payable for the first 3 months after D's death, those 3 months;
- (c) where an adult pension becomes payable on D's death but ceases to be payable before 3 months after D's death, the first 3 + BP months after D's death.

(2) BP is 3 minus the number of months (and fractions of a month) during which the adult pension was payable.

(3) The annual rate of the child pension is made up of the following—

- (a) where D dies in service and falls within paragraph (2)(a) or (b) of regulation 100 (short-term rate of adult and child pensions: supplemental), the annual rate of D's contributable salary on D's last day in pensionable employment, disregarding any reduction by reason of sick leave or maternity, paternity or adoption leave, divided by the number of D's eligible children to whom a pension is payable;
- (b) where D dies in service and falls within paragraph (2)(c) or (d) of regulation 100, the annual rate, at the date of D's death, of the notional salary mentioned in regulation C9(7) of TPR 1997 or, as the case may be, regulation 19(8), divided by the number of D's eligible children to whom a pension is payable;
- (c) where D dies as a phased retirement pensioner, the annual rate at the date of D's death (disregarding any reduction by virtue of a pension-sharing order) of any phased retirement pension, divided by the number of D's eligible children to whom a pension is payable;
- (d) where D dies as a retirement pensioner, the annual rate at the date of D's death (disregarding any reduction by virtue of a pension-sharing order) of any retirement pension, divided by the number of D's eligible children to whom a pension is payable.

(4) Where—

- (a) D does not die in service, or die as a phased retirement pensioner or as a retirement pensioner, or
- (b) where the annual rate of the child pension calculated in accordance with paragraph (3) is smaller than the annual rate calculated in accordance with regulation 99 (child pensions: long-term rate),

the annual rate of the child pension is the same as the annual rate calculated in accordance with that regulation.

Child pensions: long-term rate

99.—(1) Except as provided in regulation 98 (child pensions: short-term rate), the annual rate of a child pension is $R \times$ the average salary of the person (D) on whose death the pension is payable \times D's family benefit service (in years and fractions of a year)/EC.

(2) R is—

- (a) while an adult pension is payable in respect of D, 1/160;
- (b) where no adult pension becomes payable on D's death or where such a pension became payable on D's death but ceases to be payable, 1/120.

(3) EC is—

- (a) 2 while the number of D's eligible children to whom a child pension is payable is 1 or 2, and
- (b) the number of D's eligible children to whom a child pension is payable in any other case.

(4) Part 2 of Schedule 9 (family benefit service) has effect for determining D's family benefit service.

Short-term rate of adult and child pensions: supplemental

100.—(1) This regulation has effect for the purpose of this Part.

(2) A person (D) dies “in service” if D dies in any of the following circumstances—

- (a) D dies in pensionable employment;
- (b) D ceases to be in pensionable employment because D is incapacitated and dies within 12 months after the cessation of the pensionable employment without returning to employment in a capacity mentioned in Schedule 2 and before a retirement pension, the calculation of which takes into account that pensionable employment, becomes payable;
- (c) D dies during a period in respect of which D is paying contributions under regulation C9 of TPR 1997 or regulation 19 (election to pay contributions by a person serving in a reserve force);
- (d) the period in respect of which D is paying contributions under regulation C9 of TPR 1997 or regulation 19 ends because D is incapacitated, and D dies within 12 months after the end of that period without returning to employment in a capacity mentioned in Schedule 2 and before a retirement pension becomes payable.

(3) A person (D) dies “as a phased retirement pensioner” if D dies after a phased retirement pension (other than one which has ceased to be payable under regulation 59 (cessation of phased retirement pension)) becomes payable.

(4) A person (D) dies “as a retirement pensioner” if D dies after a retirement pension becomes payable.

(5) For the purpose of this regulation, an ill-health pension does not become payable before a person's death unless payment is initiated before the person's death.

Additional pensions for surviving adults

101.—(1) This regulation applies on the death of the AP beneficiary (D) of an AP election.

(2) An additional pension is payable in respect of each AP election of which D is an AP beneficiary from the day after the date of D's death to D's surviving adult for life.

(3) The annual rate of the pension is half the amount with which D is credited under Schedule 4 in respect of the AP election multiplied by the factor mentioned in paragraph (5) if that factor is greater than 1.

(4) But where D dies in service, as a phased retirement pensioner or as a retirement pensioner, during the first 3 months after D's death, the annual rate of the pension is the annual rate, at the date of D's death, of the additional pension which was payable to D.

(5) The factor is $RPI1/RPI2$, where—

(6) RPI1 is the retail prices index for the penultimate month before the month which includes the day before the day on which the pension is deemed to begin for the purposes of PIA 1971 (see section 8(2) of that Act), and

(7) RPI2 is the retail prices index for the month which includes the start date.

(8) In this regulation—

(9) "AP election" means an election accepted by the Secretary of State under Schedule 4 (contributions for additional pensions) which is a dependant's election as defined in paragraph 1 of that Schedule;

(10) "AP beneficiary" has the same meaning as in that Schedule;

(11) "start date" has the same meaning as in that Schedule.

PART 10

Benefits for pension credit members

Introduction and interpretation

102.—(1) This Part makes provision for the discharge of the Secretary of State's liability in respect of pension credits by the payment of—

- (a) death grants;
- (b) pension credit retirement benefits.

(2) In this Part "normal pension age" in relation to a pension credit member means—

- (a) 60, if on the transfer day the pension debit member was a pre-2007 entrant, and
- (b) 65, if on the transfer day the pension debit member was a person with mixed service or a 2007 or later entrant.

Person to whom death grant is payable on death of pension credit member

103.—(1) A pension credit member ("the appointor") may nominate another individual ("the nominee") for the purpose of this Part by giving written notice to the Secretary of State.

(2) A nomination under paragraph (1) ceases to have effect if—

- (a) the appointor revokes the nomination by giving written notice to the Secretary of State,
- (b) the appointor subsequently nominates a different person in place of the nominee, or
- (c) the nominee dies.

(3) The nominee is the appointor's death grant beneficiary for the purpose of this Part if the nomination has effect at the date of the appointor's death.

(4) Where the appointor nominates more than one individual under paragraph (1), the notice must state in relation to each nominee—

- (a) the share of the death grant to be paid to the nominee, and
- (b) whether, if the nominee predeceases the appointor, the Secretary of State must treat the notice as stating that the deceased nominee's share of the death grant be paid—

- (i) to the surviving nominee or, if there is more than one, to the surviving nominees in accordance with paragraph (5), or
- (ii) to the appointor's personal representatives as part of the appointor's estate.

(5) Where the share of the deceased's nominee's death grant is to be paid to the surviving nominees, it is to be paid to them in shares such that the proportion which each surviving nominee's share bears to each of the other surviving nominee's shares is the same as it was in the nomination.

(6) Any death grant paid under this Part must be paid to the appointor's death grant beneficiary or, if more than one, death grant beneficiaries in the shares determined in accordance with paragraphs (4) and (5).

(7) But where there is no death grant beneficiary, the death grant must be paid to the appointor's surviving spouse or surviving civil partner or, if there is no such person, to the appointor's personal representatives as part of the appointor's estate.

Death grant: death of pension credit member before benefits payable

104.—(1) A death grant is payable on the death of a pension credit member (D) who dies before pension credit retirement benefits become payable under regulation 105 (pension credit retirement benefits).

- (2) The amount of the death grant is—
 - (a) where D had a normal pension age of 60, an amount equal to the amount of the pension credit retirement lump sum which would have been payable if D had reached that age at the date of D's death, and
 - (b) where D had a normal pension age of 65, an amount equal to the amount of the pension credit retirement lump sum which would have been payable if D had had a normal pension age of 60 and had reached that age at the date of D's death.

Pension credit retirement benefits

105.—(1) A pension credit retirement pension is payable to a pension credit member (P) from the entitlement day.

- (2) Except as otherwise provided in these Regulations, the pension is payable for life.
- (3) Where P has a normal pension age of 60 a pension credit retirement lump sum is payable to P on the entitlement day.
- (4) But a pension credit retirement lump sum is not payable if—
 - (a) P complies with regulation 107 (payment of benefits on application to the Secretary of State) after P reaches 75, or
 - (b) a retirement lump sum became payable to the pension debit member before the transfer day, unless—
 - (i) the pension debit member was in further employment on the transfer day, or
 - (ii) the pension debit member had ceased to be in further employment on the transfer day but payment of retirement benefits relating to that further employment has not been initiated on the transfer day.

(5) The entitlement day cannot be before the transfer day and paragraphs (6) to (8) are subject to this paragraph.

(6) Where the pension debit member was in pensionable employment or excluded employment on or after 30th March 2000, the entitlement day must be after P reaches 55.

(7) Where paragraph (6) applies and, in the application for payment under regulation 107, P specifies that the pension (and, where appropriate, lump sum) is to be payable on a date—

- (a) before P reaches 60, where P has a normal pension age of 60, or
- (b) before P reaches 65 where P has a normal pension age of 65

the entitlement day is such day as P may specify in P's application which must be no earlier than 6 weeks after the day on which the application is made.

(8) Where—

- (a) paragraph (6) does not apply, or
- (b) paragraph (6) applies but paragraph (7) does not apply,

the entitlement day is the date on which P reaches the normal pension age.

(9) If a pension credit retirement lump sum is payable—

- (a) the annual rate of the pension credit retirement pension must be such that the combined value of the pension credit retirement pension and the pension credit retirement lump sum, when calculated in accordance with regulations made under paragraph 5(b) of Schedule 5 to WRPA 1999, equals the amount of the pension credit, and
- (b) the amount of the pension credit retirement lump sum must be 3 times the annual rate of the pension credit retirement pension.

(10) But where—

- (a) a phased retirement lump sum became payable to the pension debit member before the transfer day, or
- (b) a retirement lump sum became payable to the pension debit member before the transfer day, but the pension debit member—
 - (i) was in further employment on the transfer day, or
 - (ii) had ceased to be in further employment on the transfer day, but payment of retirement benefits relating to the further employment had not been initiated on the transfer day

paragraph (9)(b) does not apply and the relationship between the pension credit retirement lump sum and the annual rate of pension credit retirement pension is to be determined by the Secretary of State after taking advice from the scheme actuary.

(11) If no lump sum is payable, the annual rate of the pension credit retirement pension must be such that its value, when calculated in accordance with regulations made under paragraph 5(b) of Schedule 5 to WRPA 1999, equals the amount of the pension credit.

(12) But if paragraph (7) applies the amounts referred to in paragraphs (9) to (11) must be multiplied by the appropriate factor.

Death grant: death of pension credit member after benefits payable

106.—(1) A death grant is payable on the death of a pension credit member (D) if—

- (a) a pension credit retirement pension had become payable before D's death, and
- (b) AR is greater than AP.

(2) AR is 5 times the annual rate of the pension at the date of D's death.

(3) AP is the amount payable to D since the pension became payable.

(4) The amount of the death grant is AR-AP.

PART 11

General

Payment of benefits on application to Secretary of State

107.—(1) Benefits under these Regulations are payable by the Secretary of State.

(2) Despite any provision of these Regulations according to which a benefit becomes payable at a certain time, no benefit is to be paid unless paragraphs (3) to (5) have been complied with.

(3) A written application for payment must be made to the Secretary of State.

(4) The applicant must provide the Secretary of State with such relevant information in the applicant's possession or which the applicant can reasonably be expected to obtain as the Secretary of State may specify in writing.

(5) An application for ill-health retirement benefits, or for a short-service serious ill-health grant, must be accompanied by all the medical evidence necessary for the Secretary of State to determine that the applicant is entitled to the benefit or benefits including, where applicable, evidence that the person's ability to carry out work is impaired by more than 90% and is likely permanently to be so.

(6) Where a person ceases to be in further employment ("the earlier further employment") and subsequently re-enters further employment ("the subsequent further employment") without making an application under this regulation for retirement benefits in respect of the earlier further employment, no application may be made under this regulation for retirement benefits solely in respect of the earlier further employment during the subsequent further employment.

Lump sums: declaration

108.—(1) This regulation applies where the Secretary of State is proposing to pay a lump sum to a person (P) under—

- (a) regulation 58 (phased retirement benefits);
- (b) regulation 60 (retirement benefits);
- (c) regulation 65 (total incapacity benefits)
- (d) regulation 80 (admitted service benefits);
- (e) regulation 105 (pension credit retirement benefits);
- (f) regulation 116 (election to receive lump sum in place of part of pension);
- (g) regulation 118 (commutation: serious ill health);
- (h) regulation 119 (commutation: small pensions).

(2) P must, by a date determined by the Secretary of State, provide a declaration in a form specified by the Secretary of State and signed by P that, on payment of the lump sum, paragraph 3A of Schedule 29 to FA 2004⁽³¹⁾ would not apply.

(3) If no such declaration is provided by the date determined by the Secretary of State—

- (a) in the case of a lump sum under regulation 58 (phased retirement benefits) the Secretary of State is to treat P's election under regulation 57 (election to receive phased retirement benefits) as never having been made;
- (b) in the case of a lump sum under regulation 60 (retirement benefits) regulation 65 (total incapacity lump sum) regulation 80 (admitted service benefits) or regulation 105 (pension credit retirement benefits)—

⁽³¹⁾ Paragraph 3A of Schedule 29 was inserted by section 159 of the Finance Act 2006 (c.25).

- (i) the Secretary of State may determine that the lump sum is not payable to P, and
 - (ii) if the Secretary of State so determines, the Secretary of State must, in place of the lump sum, increase the annual rate of the pension paid under that regulation by an amount representing the value of the lump sum;
 - (c) in the case of a lump sum under regulation 116 (election to receive lump sum in place of part of pension), regulation 118 (commutation: serious ill health) or regulation 119 (commutation: small pensions), the Secretary of State is to treat P's application under that regulation as never having been made.
- (4) The amount representing the value of the lump sum referred to in paragraph (3)(b) is to be determined by the Secretary of State after taking advice from the scheme actuary.

Monthly payments

109.—(1) This regulation applies to the payment of a pension except where regulation 110 (quarterly payments) applies.

- (2) An initial payment is to be made on the initial payment date.
- (3) The amount of the initial payment is $DI/DM \times AR/12$, where—
 - DI is the number of days in the period beginning on the payable date and ending on the initial payment date and is 1 where the payable date falls on the initial payment date, and
 - DM is the number of days in the period beginning on the day which falls 1 month before the day after the initial payment date and ending on the initial payment date.
- (4) Subsequent payments of $AR/12$ are to be made on the payment date in subsequent months.
- (5) Where the cessation date does not fall on the payment date, a final payment is to be made on, or as soon as possible after, the cessation date.
- (6) The amount of the final payment is $DF/DM \times AR/12$, where—
 - DF is the number of days in the period beginning on the day immediately following the last payment date before the cessation date and ending on the cessation date, and
 - DM is the number of days in the period beginning on the day immediately following the last payment date before the cessation date and ending on what would have been the next payment date if the pension had not ceased to be payable.
- (7) In the case of a pension under Part 9 (family benefits), the payment date is the 28th day of the month.
- (8) In the case of any other pension, the payment date is the day before the day of the month on which the person to whom the pension is payable was born, and—
 - (a) where the person was born on the 1st day, it is the last day of the month;
 - (b) where the person was born on the 30th day, for any month in which there is no 29th day it is the 28th day of the month;
 - (c) where the person was born on the 31st day, for any month in which there is no 30th day it is the last day of the month.
- (9) In this regulation—
 - AR is the annual rate of the pension;
 - “cessation date” means the last day on which the pension is payable;
 - “initial payment date” means the first payment date which follows the payable date or, if the payable date falls on the payment date, the payable date;
 - “payable date” means the date on which the pension becomes payable;

“pension” includes an annuity.

Quarterly payments

110.—(1) This regulation applies to the payment of a pension where a person’s application under regulation 107 (payment of benefits on application to Secretary of State) includes a request that the pension be paid quarterly.

(2) An initial payment is to be made on the initial payment date.

(3) The amount of the initial payment is $DI/DQ \times AR/4$, where—

DI is the number of days in the period beginning on the payable date and ending on the initial payment date, and

DQ is the number of days in the period beginning on the day which falls 3 months before the day after the initial payment date and ending on the initial payment date.

(4) Subsequent payments of $AR/4$ are to be made on the payment date in every third month after the month in which the initial payment date falls.

(5) Where the cessation date does not fall on a day on which a payment under paragraph (4) is to be made, a final payment is to be made on, or as soon as possible after, the cessation date.

(6) The amount of the final payment is $DF/DQ \times AR/4$, where—

DF is the number of days in the period beginning on the day immediately following the last day on which a payment under paragraph (4) was to be made and ending on the cessation date, and

DQ is the number of days in the period beginning on the day immediately following the last day on which a payment under paragraph (4) was to be made and ending on what would have been the next such day if the pension had not ceased to be payable.

(7) In the case of a pension under Part 9 (family benefits), the payment date is the 28th day of the month.

(8) In the case of any other pension, the payment date is the day before the day of the month on which the person to whom the pension is payable was born, and—

(a) where the person was born on the 1st day, it is the last day of the month;

(b) where the person was born on the 30th day, for any month in which there is no 29th day it is the 28th day of the month;

(c) where the person was born on the 31st day, for any month in which there is no 30th day it is the last day of the month.

(9) In this regulation—

AR is the annual rate of the pension;

“cessation date” means the last day on which the pension is payable;

“initial payment date” means the third payment date which follows the payable date or, if the payable date falls on the payment date, the second payment date which follows the payable date;

“payable date” means the date on which the pension becomes payable;

“pension” includes an annuity.

Apportionment Act 1870 not to apply

111. The Apportionment Act 1870(32) being inconsistent with regulations 109 (monthly payments) and 110 (quarterly payments) does not apply to benefits under these Regulations.

Interest on late payment of benefits

112.—(1) This regulation applies to a benefit except—

- (a) a phased retirement pension or a phased retirement lump sum, or
- (b) a total incapacity pension payable between the date on which the person to whom it is paid first engages in any other form of paid or unpaid work as mentioned in paragraph (3)(c)(i) of regulation 67 (cessation of total incapacity pension) and the date on which the Secretary of State determines as mentioned in paragraph (3)(c)(ii) of that regulation.

(2) Except as provided in paragraphs (9) and (10), where a benefit to which this regulation applies is not paid within 1 month of the due date, the Secretary of State must pay interest on the amount unpaid at the Bank of England base rate compounded with three-monthly rests from the due date to the date of payment.

(3) Where the benefit is a death grant, the due date is the day after the date on which the Secretary of State became satisfied that payment may be made.

(4) Where the benefit is a lump sum or a grant other than a death grant, the due date is the day on which the benefit is payable.

(5) Where the benefit is a pension or annuity, the due date is—

- (a) in the case of a payment under regulation 109(2) or 110(2), the initial payment date (as defined in those regulations);
- (b) in the case of a payment under regulation 109(5) or 110(5), the cessation date (as defined in those regulations);
- (c) in any other case, the date on which payment is to be made under regulation 109(4) or 110(4).

(6) In determining the due date in accordance with paragraphs (4) and (5), no account is to be taken of the requirement to make an application for the benefit under regulation 107 (except the requirement contained in regulation 60(3)(c) or in paragraph 10(1)(e) of Schedule 7).

(7) In this regulation “Bank of England base rate” means—

- (a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short-term liquidity in the money markets, or
- (b) where an order under section 19 of the Bank of England Act 1998(33) is in force, any equivalent rate determined by the Treasury under that section.

(8) Where a payment to the Secretary of State is received after the benefit to which it relates becomes payable, the Secretary of State may determine that this regulation does not apply to the benefit until the payment is received.

(9) Where a benefit is payable between the date specified under regulation 115(1) (evidence of continuing entitlement etc. to benefit) and the date on which the evidence referred to in that regulation is received by the Secretary of State in circumstances where—

- (a) the Secretary of State required evidence to be provided under that regulation,
- (b) the necessary evidence was not provided by the date specified but that evidence was provided later, and
- (c) it does not appear to the Secretary of State that the delay in the provision of the evidence was due to circumstances outside the control of the person to whom the benefit is payable

this regulation does not apply unless the Secretary of State determines in a particular case, either in respect of the whole period or any part of the period.

Payment of benefits in certain cases

113.—(1) Where a person (P) to whom a benefit is payable has not reached the age of 18 or is incapable by reason of infirmity of mind or body of managing P's affairs, the Secretary of State may—

- (a) pay the benefit to any person having the care of P, or
- (b) apply it as the Secretary of State thinks fit for the benefit of P or P's dependants.

(2) Where a benefit is payable to a widow and there is more than one widow, the benefit must be paid to the widows in equal shares.

(3) Where on the death of a person (D) the total of any sums due to D and any sums payable to D's personal representatives under these Regulations does not exceed the amount specified in any order made under section 6 of the Administration of Estates (Small Payments) Act 1965⁽³⁴⁾ which applies to D's death, the Secretary of State may, without requiring the production of probate or other proof of title, pay the amount due—

- (a) to D's personal representatives, or
- (b) to the person, or to or among any one or more of any persons, appearing to the Secretary of State to be beneficially entitled to D's estate.

Cessation, etc. of benefits where no entitlement

114.—(1) This regulation applies where after paying a benefit the Secretary of State determines that there was no entitlement to the benefit or there is no longer an entitlement to the benefit.

(2) The Secretary of State may—

- (a) cease to pay the benefit;
- (b) withhold the whole or any part of the benefit;
- (c) in the case of a payment made when there was no entitlement to the benefit, recover any such payment.

Evidence of continuing entitlement, etc. to benefit

115.—(1) Where a benefit is being paid, the Secretary of State may at any time require that evidence be provided, by such date as the Secretary of State may specify, to establish—

- (a) the identity of the person to whom the benefit is being paid;
- (b) continuing entitlement to the benefit.

(2) If no such evidence is provided by the date specified, the Secretary of State may withhold the whole or any part of the benefit.

(3) In a case where a benefit ceases to be payable if a person ceases to be incapacitated or if a person's ability to carry out any work ceases to be impaired by more than 90%, the power in paragraph (1)(b) may be exercised so as to require the person to provide evidence that there has been no such cessation.

Election to receive lump sum in place of part of pension

116.—(1) A person who was in pensionable employment on or after 1st January 2007 may elect to receive a lump sum in place of—

- (a) part of any phased retirement pension, or
- (b) part of one or more of—

(34) 1965 c.32; the amount currently specified, in S.I. 1984/539 is £5000.

- (i) any retirement pension,
- (ii) any additional pension, or
- (iii) any total incapacity pension

by giving written notice to the Secretary of State.

(2) But paragraph (1) only applies where the person complies with regulation 107 (payment of benefits on application to Secretary of State) relating to the pension before the person reaches the age of 75.

(3) For the purpose of paragraph (1), a person is to be treated as being in pensionable employment on or after 1st January 2007 if the person has paid contributions under regulation C9 of TPR 1997 or regulation 19 (election to pay contributions by a person serving in a reserve force) for a period which ends on or after that date.

(4) A pension credit member (PCM) whose credit is derived from rights which include rights attributable to the pension debit member's pensionable employment on or after 1st January 2007 may, if the condition in paragraph (5) is satisfied, elect to receive a lump sum in place of part of PCM's pension credit retirement pension by giving notice in writing to the Secretary of State.

(5) The conditions are—

- (a) that no payment of any pension to the corresponding pension debit member had been initiated before the transfer day unless that pension relates to pensionable employment which was not taken into account in determining the rights from which PCM's credit is derived, and
- (b) PCM complies with regulation 107 (payment of benefits on application to Secretary of State) relating to the pension credit member's pension before PCM reaches 75.

(6) For the purpose of paragraph (4), a pension credit member's credit is to be treated as attributable to pensionable employment on or after 1st January 2007 if it is attributable to contributions paid under regulation C9 of TPR 1997 or regulation 19 (election to pay contributions by a person serving in a reserve force) for a period which ends on or after that date.

(7) The notice under paragraph (1) or (4) must—

- (a) be given at the same time as the person makes an application under regulation 107 for the pension, and
- (b) specify the amount of the lump sum which the person wishes to receive and, where appropriate, the pension in place of which the lump sum is to be received.

(8) The amount of the lump sum—

- (a) must be a multiple of £12, and
- (b) must not, where an election is made under paragraph (1) to take a lump sum in place of part of a retirement pension by a person with a guaranteed minimum, be such that the total of—
 - (i) the annual rate of the person's retirement pension when reduced in accordance with paragraph (10), and
 - (ii) any phased retirement pension paid to the person with that pension,would be less than the guaranteed minimum.

(9) The amount of the lump sum, or where an election relates to more than one pension, the aggregate of the lump sums, must not exceed the person's permitted maximum.

(10) Where an election is made under this regulation, the annual rate of the pension in respect of which the election is made is reduced by £1 for every £12 of lump sum received.

(11) Regulation 117 (person to be treated as electing to receive lump sum in place of pension) makes provision for a person to be treated as electing to receive a lump sum in place of a pension in certain circumstances.

Person to be treated as electing to receive lump sum in place of pension

117.—(1) This regulation applies where—

- (a) a person (P) makes or is treated as making an election under regulation 116 (election to receive lump sum in place of pension) (“the original election”) to receive a lump sum in place of part of a phased retirement pension,
- (b) the pension referred to in sub-paragraph (a) ceases to be payable under regulation 59 (cessation of phased retirement pension), and
- (c) a phased retirement or a retirement pension becomes payable to P.

(2) This regulation also applies where—

- (a) a person (P) makes or is treated as making an election under regulation 117 (“the original election”) to receive a lump sum in place of part of—
 - (i) an ill-health pension, or
 - (ii) a total incapacity pension,
- (b) the pension referred to in sub-paragraph (a) ceased to be payable under regulation 68 (cessation and reinstatement of ill-health pension (application received before 6th January 2007)) or regulation 69 (cessation and reinstatement of ill-health pension (application received on or after 6th January 2007)), and
- (c) a phased retirement or a retirement pension becomes payable to P.

(3) P is to be treated as making an election under regulation 116 (“the new election”) to receive a lump sum of the appropriate amount in place of part of the pension referred to in paragraph (1)(c) or (2)(c) and any total incapacity pension paid with that pension.

(4) The annual rate of the new pension is to be reduced in accordance with regulation 116.

(5) Despite paragraph (3), the lump sum to be paid to P pursuant to the new election is the appropriate amount less the amount of the lump sum (or aggregate of the lump sums) paid to P pursuant to the original election.

(6) The appropriate amount is $(NP - (OP2/OP1 \times NP)) \times 12$, rounded to the nearest £12, where—

NP is the annual rate of the new pension taking no account of the new election,

OP1 is the annual rate of the original pension taking no account of the original election, and

OP2 is the annual rate of the original pension after taking account of the original election.

(7) In paragraphs (4) and (6) “the new pension” means the pension referred to in paragraph (1)(c) or (2)(c), or the aggregate of either of those pensions and any total incapacity benefit paid with that pension.

(8) In paragraph (6) “the original pension” means the pension referred to in paragraph (1)(a) or the pension, or aggregate of the pensions, referred to in paragraph (2)(a).

Commutation: serious ill health

118.—(1) Where a person (P) who is under 75 has a life expectancy of less than a year at the time when—

- (a) a retirement pension which is paid because Case A applies to P’s reckonable service, or
- (b) an ill-health pension

becomes payable to P, the Secretary of State may, on the application of P, commute the pension and any phased retirement pension, additional pension or total incapacity pension paid with the pension by paying a lump sum specified in paragraph (2).

(2) The lump sum is—

(a) a sum equal to 5 x the annual rate of the retirement pension and any total incapacity pension, and

(b) a sum equal to (A-B) x the annual rate of any phased retirement pension where—

A is 5, and

B is the period (in years and fractions of a year) from the date on which the phased retirement pension was first paid until the date of the application (and accordingly if this period is 5 years or more no lump sum is payable in respect of a phased retirement pension).

(3) Where a pension credit member (P) who is under 75 has a life expectancy of less than a year at any time before or at the time when a pension credit member's pension becomes payable to P, the Secretary of State may, on the application of P, commute the pension by paying a lump sum equal to 5 times the annual rate of the pension.

(4) An application must

(a) be in writing,

(b) be made at the same time as the person makes an application under regulation 107 (payment of benefits on application to Secretary of State),

(c) be accompanied by all the medical evidence necessary for the Secretary of State to determine that P is entitled to the commutation.

(5) Where P's application is in respect of a pension in respect of which P is eligible to apply under regulation 116 (election to receive lump sum in place of part of pension)—

(a) P is to be treated as applying under that regulation to receive the largest permissible lump sum in place of part of the pension, and

(b) the reference in this regulation to the annual rate of the pension is to the annual rate reduced in accordance with regulation 116.

Commutation: small pensions

119.—(1) Where—

(a) a retirement pension is payable to a person (P), and

(b) the conditions set out in paragraph (4) are satisfied

the Secretary of State may, on the application of P, commute that pension and any phased retirement pension additional pension or total incapacity pension paid with that pension by paying a lump sum to P.

(2) But no payment may be made under paragraph (1) if the pension includes a guaranteed minimum unless P has reached GMP age.

(3) Where a lump sum is paid under paragraph (1) neither a death grant under Part 8 (death grants) nor a pension under Part 9 (family benefits) is payable on P's death,

(4) The conditions in this paragraph are that—

- (a) the lump sum is a trivial commutation lump sum as defined in paragraph 7 of Schedule 29 to FA 2004 or falls within regulation 11 or 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009⁽³⁵⁾,
- (b) the application is made at the same time as P makes an application under regulation 107,
- (c) no transfer value has been accepted from the scheme managers of a personal pension scheme under regulation 35,
- (d) during the period of 5 years ending with the application no other transfer value has been accepted, and
- (e) during the period of 3 years ending with the application no cash equivalent or transfer value has been paid in respect of P.

(5) Where—

- (a) a pension credit retirement pension becomes payable to a pension credit member, and
- (b) the conditions set out in paragraph (6) are satisfied

the Secretary of State may, on the application of the pension credit member commute the pension by paying a lump sum to the pension credit member.

(6) The conditions in this paragraph are that—

- (a) the lump sum is a trivial commutation lump sum as defined in paragraph 7 of Schedule 29 to FA 2004 or falls within regulation 11 or 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009, and
- (b) the application is made at the same time as the pension credit member makes an application under regulation 107,

(7) Where—

- (a) a pension is payable to a person (“the family member”) under Part 9 (family benefits), and
- (b) the conditions set out in paragraph (8) are satisfied

the Secretary of State, may on the application of the family member commute that pension by paying a lump sum to the family member.

(8) The conditions are that—

- (a) D had not reached the age of 75 at the date of D’s death,
- (b) D would not have reached the age of 75 when the lump sum is paid,
- (c) the application is made at the same time as the family member makes an application under regulation 107,
- (d) the lump sum does not exceed 1% of the standard lifetime allowance on the day that the lump sum would otherwise be paid,

and in this paragraph D is the person who had been in pensionable employment and on whose death the family benefits became payable.

(9) The lump sums referred to in paragraphs (1), (5) and (7) are to be determined by the Secretary of State after taking advice from the scheme actuary.

Guaranteed minimum pensions

120.—(1) Where a person who has a guaranteed minimum reaches GMP age, the weekly rate of any relevant pension must not be less than the person’s guaranteed minimum under sections 14 to 16 of PSA 1993.

(2) Where no relevant pension becomes payable to a person who has a guaranteed minimum (P) within 5 years after P reaches GMP age, a guaranteed minimum pension, the weekly rate of which is P's guaranteed minimum under sections 14 to 16 of PSA 1993, is payable to P.

(3) Paragraph (2) does not apply—

- (a) while P consents to the application of that paragraph being postponed,
- (b) from the date on which a relevant pension becomes payable, or
- (c) where paragraph (4) applies.

(4) This paragraph applies where—

- (a) a person (P) who has a guaranteed minimum exercises P's right to a cash equivalent,
- (b) the pension scheme into which P's rights to benefits under these Regulations are transferred does not accept a transfer of P's accrued rights to guaranteed minimum pensions,
- (c) P's accrued rights to a guaranteed minimum pension are not transferred elsewhere.

(5) Where paragraph (4) applies, a guaranteed minimum pension, the weekly rate of which is the person's guaranteed minimum under sections 14 to 16 of PSA 1993, is payable to P for life from the date on which P reaches GMP age.

(6) Where a person who has a guaranteed minimum dies leaving a widow, widower or civil partner the pension payable to the widow, widower or civil partner under Part 9 (family benefits) must be paid for any period required by or under section 17 of PSA 1993 at a weekly rate which is no be less than the widow's, widower's or civil partner's guaranteed minimum (as set out in that section).

(7) In this regulation—

“accrued rights to guaranteed minimum pensions” are to be construed in accordance with section 20 of PSA 1993;

“relevant pension” means a phased retirement pension or retirement pension which becomes payable in respect of contracted-out employment before 6th April 1997.

(8) In this regulation the question whether a person has a guaranteed minimum is to be determined in accordance with section 14 of PSA 1993.

(9) This regulation overrides any inconsistent provision elsewhere in these Regulations.

(10) But this regulation is subject to—

- (a) regulation 64 (abatement of retirement pension during further employment);
- (b) regulation 118 (commutation: serious ill-health);
- (c) regulation 119 (commutation: small pensions);
- (d) regulation 121 (forfeiture of benefits).

Forfeiture of benefits

121.—(1) This regulation applies to a benefit payable to a person who is convicted of—

- (a) an offence of treason, or
- (b) one offence or more under the Official Secrets Acts 1911 to 1989⁽³⁶⁾ for which the person has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years

where the offence was committed before the benefit became payable.

(36) 1911 c.28, 1920 c.75, 1939 c.121, 1989 c.6.

(2) This regulation also applies to a benefit under Part 7 or Part 10 payable to a person convicted of an offence, committed before the benefit became payable, in connection with service as a public servant certified by the Secretary of State to have been gravely injurious to the interests of the State or to be liable to lead to serious loss of confidence in the public service.

(3) This regulation also applies to a benefit payable on the death of a person (D) to any person convicted of the murder of D, the manslaughter of D or any other offence of which the unlawful killing of D is an element.

(4) The Secretary of State may defer or suspend payment of a benefit to which this regulation applies for so long, or reduce its amount or rate by so much and for so long, as the Secretary of State may determine.

(5) The power in paragraph (4) may not be exercised in relation to the guaranteed minimum pension of a person unless the person or, in the case of a widow's, widower's or surviving civil partner's guaranteed minimum pension, the person by reference to whose contracted-out employment the pension is payable, is convicted as mentioned in paragraph (1).

Benefits not assignable

122.—(1) Where a benefit is payable to a person or a person has a right to a future benefit, the benefit or the right to the benefit cannot be assigned in favour of the person's widow, widower, surviving civil partner or dependant and an agreement to this effect is void.

(2) Section 91 of PA 1995 (inalienability of occupational pensions) prevents assignment in other circumstances.

Reduction of benefits: lifetime allowance charge

123.—(1) This regulation applies where—

- (a) the lifetime allowance charge arises because a benefit becomes payable to a person, and
- (b) the person and the Secretary of State are jointly and severally liable to the charge.

(2) The Secretary of State must pay the charge.

(3) The amount of the benefit must be reduced to reflect the amount of the charge in such manner as the Secretary of State shall determine, after taking advice from the scheme actuary.

General prohibition on unauthorised payments

124. Nothing in these Regulations requires or authorises the making of any payment which, if made, would be an unauthorised payment for the purpose of Part 4 of FA 2004 (see section 160(5) of that Act) unless the Secretary of State determines otherwise (in the case of a particular payment).

PART 12

Finance

Teachers' Pension Budgeting and Valuation Account

125.—(1) An account in a form approved by the Treasury is to be prepared by the Secretary of State for every financial year starting with the financial year ending 31st March 2011.

(2) The account shall be open to examination by the Comptroller and Auditor General.

Receipts etc. to be credited

126.—(1) Employees' and employers' contributions received during the financial year are to be credited to the account.

(2) Employees' contributions comprise—

- (a) all contributions payable under regulations 12(13)(c), 18, 19, Schedule 4, Schedule 5, under Schedules 4 and 5 of TPR 1997 and under paragraph 36 of Schedule 10 to TPR 1997,
- (b) the contributions referred to in regulation 28(3)(c),
- (c) so much of any additional contributions payable under regulation C9 of TPR 1997 as would have been payable under regulation 18 if pensionable employment had continued,
- (d) all amounts payable under regulation 25 and under regulations C16(5) to (7) and C17 of TPR 1997 (return of repaid contributions).

(3) Employers' contributions comprise—

- (a) the contributions payable under regulation 27 and under regulation G6 of TPR 1997,
- (b) so much of any additional contributions payable under regulation C9 of TPR 1997 as would have been payable under regulation 27 if pensionable employment had continued.

(4) There are also to be credited to the account—

- (a) the closing balance in the account for the preceding financial year,
- (b) all transfer values accepted during the financial year,
- (c) all contributions equivalent premiums refunded, or recovered under section 61 of PSA 1993, during the financial year,
- (d) any interest and other payments under these Regulations received during the financial year, and
- (e) the notional investment income for the financial year on the balance in the account.

(5) For the purposes of paragraph (4)(e), the notional investment income for each financial year is to be determined by the scheme actuary and derived using a percentage return as specified from time to time by the Treasury.

Payments to be debited

127. There are to be debited to the account all sums paid during the financial year by way of—

- (a) benefits under Parts 7 to 10,
- (b) payments under paragraph 12 of Schedule 10 to TPR 1997 (equivalent pension benefits) (which continues to have effect by virtue of paragraph 23 of Schedule 13),
- (c) repayment of contributions (including interest) under regulation 22 and under regulation C14 of TPR 1997 (which continues to have effect by virtue of paragraph 13 of Schedule 13),
- (d) cash equivalents and transfer values,
- (e) contributions equivalent premiums, and
- (f) increases payable under PIA 1971.

Actuarial review

128.—(1) The scheme actuary must from time to time, make an actuarial review on the position in relation to the account as at the date determined by the Secretary of State ("the review date") and make a report on the review to the Secretary of State.

- (2) In making a determination under paragraph (1) the Secretary of State is to secure that—
- (a) the next review date is no later than 31st March 2012, and
 - (b) the review date for each subsequent report is no later than 4 years after the previous review date.
- (3) The Secretary of State is to determine the funding methodology to be used in making the actuarial review after taking advice from the scheme actuary.
- (4) The report referred to in paragraph (1) is to specify the standard contribution rate at which contributions should be paid during the period beginning and ending on days (following the date of the report) determined by the Secretary of State (“the contribution period”).
- (5) The report is to state the amount by which, at the review date, the value of the scheme assets exceeded or fell short of that of the scheme liabilities.
- (6) The scheme assets and the scheme liabilities shall be determined in accordance with the funding methodology specified in paragraph (3).
- (7) If the report states that the value of the scheme liabilities exceeded that of the scheme assets, it is to specify a rate at which, during the contribution period, supplementary contributions should be paid so as to remove the deficiency within the period of 15 years beginning on the first day of the contribution period.
- (8) If the report states that the value of the scheme assets exceeded that of the scheme liabilities, it is to specify the amount by which the standard contribution rate referred to in paragraph (4) should be reduced during the contribution period, so as to remove the surplus within the period of 15 years beginning on the first day of the contribution period.
- (9) The Secretary of State may determine that, having regard to the level of benefits likely to be received, there should be different contribution rates for employees whose contributable salary exceeds any amount specified by the Secretary of State (“a threshold amount”), and, if so, in the case of persons whose contributable salary exceeds a threshold amount—
- (a) whether the rate of contribution appropriate to a contributable salary of any amount should apply to the whole of the person’s contributable salary, or
 - (b) whether the rate of contribution appropriate to a contributable salary of any amount should apply only to that part of it which exceeds the threshold amount.
- (10) If a determination referred to in paragraph (9) is made—
- (a) the Secretary of State shall notify the scheme actuary accordingly, and
 - (b) the report is to contain a recommendation as to what the contribution rates should be.
- (11) More than one threshold amount may be specified in a determination referred to in paragraph (9) and accordingly more than one corresponding rate may be specified in a recommendation such as is referred to in paragraph (10)(b).
- (12) The rates referred to in paragraphs (4), (7), (8), (9) and (10)(b) are to be expressed as a percentage of the contributable salaries (or where appropriate the relevant parts of contributable salaries) from time to time of persons in pensionable employment and the percentage must be a multiple of 0.05.
- (13) Any determination made by the Secretary of State for the purpose of this regulation shall be made with the consent of the Treasury.

Meaning of “standard rate” of interest

129.—(1) Where, under any provision of these regulations, interest is required to be paid at the standard rate, the interest is calculated in accordance with this Regulation.

- (2) During any financial year the rate of interest is $((RI-RE)/RE \times 100)+3.5$ % per year, where—

RI is the retail prices index for September in the previous financial year, and

RE is the retail prices index for September in the financial year before the one referred to in the definition of RI

but if RI is lower than RE the rate of interest is 3.5% per year.

(3) Interest is compounded with monthly rests.

PART 13

Miscellaneous and supplemental

Appropriate factor

130.—(1) The Secretary of State is from time to time to determine factors relating to the ages of persons to whom benefits are payable under these Regulations.

(2) Different factors may be specified—

- (a) for persons with NPA 60 reckonable service;
- (b) for persons with NPA 65 reckonable service;
- (c) for persons to whom Part 6 of Schedule 10 to TPR 1997 (which continues to have effect by virtue of paragraph 26 of Schedule 13) applies (persons formerly members of National Health Service Pension Scheme);
- (d) for different provisions of these Regulations.

(3) Before exercising the functions under this regulation, the Secretary of State must take advice from the scheme actuary.

(4) In these Regulations “appropriate factor” means a factor determined in accordance with this regulation.

Employers: records, etc.

131.—(1) The employer of a person (T) in pensionable employment must record for each financial year—

- (a) the rate of T’s salary;
- (b) the amount of T’s contributable salary;
- (c) where, during the financial year T has spent one or more periods in part-time pensionable employment, the amount which T’s contributable salary would have been if the employment had been full time throughout the year;
- (d) any money value forming part of T’s contributable salary under regulation 16 (contributable salary-residential accommodation);
- (e) the contributions deducted under regulation 28;
- (f) the period during which T was in pensionable employment;
- (g) the dates of any absence on sick leave or maternity, paternity, parental or adoption leave and the amount of salary or statutory pay paid during it.

(2) The employer of—

- (a) a person who is or has been in pensionable employment or excluded employment, or
- (b) a person to whom regulation 64 (abatements of retirement pension during further employment) applies

must, within such time as the Secretary of State may require make such reports and returns to the Secretary of State as the Secretary of State may require for the purpose of the Secretary of State's functions under these Regulations.

(3) The employer of a person referred to in paragraph (1) or (2) must within such time as the Secretary of State may require give the Secretary of State such information and produce such documents as the Secretary of State may require for the purpose of the Secretary of State's functions under these Regulations.

Teachers etc.: information and documents

132.—(1) This regulation applies to—

- (a) a person who is or was in pensionable or excluded employment;
- (b) a person to whom regulation 64 (abatement of retirement pension during further employment) applies;
- (c) the personal representatives of a person referred to in sub-paragraph (a) or (b).

(2) A person to whom this regulation applies must, within such time as the Secretary of State may require, give the Secretary of State such information and produce such documents as the Secretary of State may require for the purpose of the Secretary of State's functions under these Regulations.

(3) A person who has become entitled to retirement benefits and who takes up employment such as is described in regulation 64 must (as well as complying with paragraph (2))—

- (a) within 14 days of taking up such employment notify the Secretary of State giving details of the salary in the employment, and
- (b) within 14 days of any change of salary notify the Secretary of State.

Extension of time

133. The Secretary of State may in any particular case extend, or treat as extended, the time within which anything is required or authorised to be done under these Regulations.

Calculation of full -time equivalent salary

134. Where any reference occurs in these Regulations, in relation to a person (P) who is in , or has spent any period in, part-time employment to the amount which P's contributable salary would have been if P had been employed full-time then, in a case where P's contract entitles P to remuneration at a rate which is not expressed as a proportion of the annual, termly, or monthly rate for a comparable full-time employment, the amount which P's contributable salary would have been if the employment had been full-time is to be calculated on the same basis as is used for the calculation of P's salary in the part-time employment in question.

Modified application in certain cases

135. Schedule 10 (modified application in certain cases) has effect.

Meaning of payment being “initiated”

136. For the purpose of these Regulations payment of a pension is “initiated” on the date on which the initial payment of the pension is made under regulation 109(2) (monthly payments) or 110(2) quarterly payments.

Election in respect of protected benefits

137.—(1) Where—

- (a) apart from this regulation, any provision of these Regulations which re-enacts with any modification any provision revoked by these Regulations, would place any person to whom a protected benefit is or may become payable (P) in a worse position than P would have been in if that modification had not been made, and
- (b) P so elects, by giving written notice to the Secretary of State before 1st December 2010,
- (c) then, subject to paragraph (3) these Regulations have effect, in relation to P, and to that benefit as if these Regulations had re-enacted the revoked provision without modification.

(2) A protected benefit is one which is being paid, or may become payable, to, or in respect of, a person who was employed in qualifying employment but ceased to be employed, or died, before 1st September 2010.

(3) If an election under paragraph (1) 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 September 2010, or
 - (ii) contributions paid in respect of such periods, and
- (b) in determining entitlement to, or the amount of, the benefit to that extent P 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 these Regulations apply accordingly.

(4) In this regulation “qualifying employment” means pensionable employment or excluded employment.

Revocations, savings and transitional provisions and consequential amendments

138.—(1) Schedule 11 (Amendments to the Teachers’ Superannuation (Additional Voluntary Contributions) Regulations 1994 and the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997 has effect.

(2) Except as provided in Schedule 13, the Regulations specified in Schedule 12 (revocations) are revoked.

(3) Schedule 13 (savings and transitional provisions) has effect.

22nd March 2010

Vernon Coaker
Minister of State
Department for Children, Schools and Families

We consent

24th March 2010

Tony Cunningham
Dave Watts
Two of the Lords Commissioners of Her
Majesty's Treasury