

**EXPLANATORY MEMORANDUM TO
THE TEACHERS' PENSIONS (MISCELLANEOUS AMENDMENTS) (No. 2)
REGULATIONS 2006**

2006 No. 2214

1. This explanatory memorandum has been prepared by The Department for Education and Skills and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 This instrument amends the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994 (1994 AVC Regulations), and the Teachers' Pensions Regulations 1997 (1997 TPS Regulations) to take account of several miscellaneous changes that need to be made to the above mentioned regulations.
3. **Matters of special interest to the Joint Committee on Statutory Instruments.**
 - 3.1 The power to make regulations which have effect from a date before they are made is contained in section 12(1) of the Superannuation Act 1972.
4. **Legislative Background**
 - 4.1 The amendment to the 1994 AVC Regulations and the amendments to regulation E19 to the 1997 TPS Regulations are in direct consequence of the new tax regime implemented by HMRC since 6 April 2006. The new tax regime provides schemes with more flexibilities on pension contributions and pension scheme benefits than existed under the pre April 2006 regime.
 - 4.2 The remaining amendments cover a number of essential but non controversial amendments to the Teachers' Pensions Regulations 1997 that need to be made to reflect developments related to certain teachers' employment. (See Section 7)
5. **Extent**
 - 5.1 This instrument applies to England and Wales.
6. **European Convention on Human Rights**
 - 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.
7. **Policy background**
 - 7.1 The amendment to the 1994 AVC Regulations and the amendment to regulation E19 the 1997 TPS Regulations are in direct consequence of the new tax regime implemented by HMRC since 6 April 2006:

(i) Regulation 11(1) and (2) of the 1994 AVC Regulations is being amended as a consequence of the HMRC's relaxation of the rules under which scheme members may arrange a transfer out of Additional Voluntary Contributions (AVC) funds to another pension scheme. At present, AVC contributions may only be transferred-out if the person leaves pensionable employment in the main scheme. The amendment permits scheme members to arrange a transfer out of their AVCs whilst remaining in pensionable employment in the TPS

(ii) Regulation E19 the 1997 TPS Regulations (commutation of pension on grounds of serious ill health) permits the commutation to a single lump sum payment of ill health retirement pension if the scheme member has a life expectancy of less than 12 months. As currently drafted, the regulation requires the value of the person's Guaranteed Minimum Pension (GMP) to be withheld in the TPS. HMRC rules now require that all benefits must be extinguished when pension is commuted and DWP have made regulations, effective 14 June 2006, that permit the GMP to be commuted along with main scheme benefits. This amendment brings the teachers' pensions regulations into line with those changes.

7.2 The remaining amendments to the 1997 TPS Regulations are being made because of developments that affect certain teachers' employment:

(i) Regulation C1 (contributable salary) is amended to protect the pension position of scheme members who participate in salary sacrifice arrangements (eg childcare vouchers). The contributable salary will remain at the unreduced rate.

(ii) Regulation C2 (payment of contributions on a former higher salary) is amended to withdraw, with effect from 1 October 2006, the provision under which certain teachers aged 50 or over may elect to pay contributions on a former higher salary if they step down. The provision was due to be withdrawn on 1 January 2007 when a package of TPS reforms is due to be implemented but this has been brought forward to 1 October 2006 to comply with age discrimination legislation that comes into force on that date.

(iii) Regulation E4 (entitlement to retirement benefits) is amended in the light of child protection arrangements that can lead to teachers with certain medical conditions being barred from teaching or working with children on the grounds that the teacher is unsuitable to work with children even if there has been no misconduct. As currently drafted, if such a person applied for ill-health retirement Regulation E4 would not permit the pension to be paid. The amendment provides the Secretary of State with discretion to award the pension if there are special circumstances, for example where the person has not been found guilty of serious misconduct.

(iv) The amendment to Regulation E13 (cessation of ill-health retirement pension) is a technical change to remove any doubt that an ill-health retirement pension would stop automatically when a person who retired on grounds of ill-health before 1 April 1997 returns to teaching in a full-time capacity.

(v) The amendment to Schedule 1 to the 1997 TPS removes redundant provisions which were inserted in error by the Teachers' Pensions (Miscellaneous Amendments) Regulations 2006 (S.I.2006/736).

(vi) The amendment to Schedule 8 to the 1997 TPS Regulations relates to people who have been subject to a Transfer of Undertakings Protection of Employment (TUPE) transfer from another public service employer. Arrangements are in place for the transfer of pension credit from the former pension scheme into the TPS but it is for individuals to decide whether to transfer or not. If a person decides to leave their pension rights in the former scheme, this amendment recognises the period of pensionable employment in the former scheme in assessing whether they meet the qualifying period of two years that needs to be completed to be paid pension from the TPS. This amendment will be effective from 1 October 2005 to cater for TUPE transfers that have taken place since that date.

7.3 Because these amendments needed to be brought into force at the earliest opportunity and as none of the amendments were contentious, a short consultation exercise took place between 27 June 2006 and 20 July 2006. This covered 86 key stakeholder groups in England and Wales including trade unions and teacher employer organisations and details of the consultation were placed on the TeacherNet website with information on how individuals could respond. No objections have been made to any of the amendments. A total of 3 consultees responded: one signified that they were content with the AVC amendment, one sought clarification of two items and one offered no comment.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

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By email: Valerie.tooth@dfes.gsi.gov.uk who can answer any queries regarding the instrument.