EXPLANATORY MEMORANDUM TO

THE TEACHERS' PENSIONS (MISCELLANEOUS AMENDMENTS) REGULATIONS 2008

2008 No. 541

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families ("the Department") and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

This instrument amends the Teachers' Pensions Regulations 1997 ("the 1997 TPS Regulations") and the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994 ("the 1994 AVC Regulations") to take account of the changes being made respectively to the Teachers' Pension Scheme ("TPS") and to the Teachers' Additional Voluntary Contributions Scheme ("the Teachers' AVC Scheme). In this document, "the main scheme" means the TPS.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Joint Committee for Statutory Instruments (Seventh Report of the 2006-07 session - 6 February 2007) highlighted a minor cross-reference error within the Teachers' Pensions etc (Reform Amendments) Regulations 2006 (SI 2006/3122) ("the Reform Amendments"). This has been addressed through regulation 6(a) in respect of regulation 16 of the 1994 AVC Regulations.

3.2 The consolidation of the 1997 TPS Regulations is underway (the consultation began on 19 December 2007 and is ongoing) with a view to consolidated regulations being made later this year.

3.3 The consolidation of the 1994 AVC Regulations is also underway with the expectation that it will be completed by the end of this year.

4. Legislative background

4.1 The 1997 TPS Regulations and the 1994 AVC Regulations make provision for the TPS and the Teachers' AVC Scheme to pay pensions and other associated benefits to teachers, lecturers and their dependants.

4.2 As the result of the Pensions Green Paper: *Simplicity, security and choice: Working and saving for retirement (December 2002)*, all public service pension schemes had to undergo wide-ranging reviews. The review of the teachers' pensions package started in November 2003 and ended with the introduction of the Reform Amendments (mentioned in paragraph 3.1 above), which came into force on 1 January 2007.

4.3 Throughout the review, there was acceptance that a number of issues could not be resolved during the negotiations with stakeholders but, that as they did not form insurmountable barriers to the reform process, they would be revisited as soon as possible thereafter with a view to reaching conclusions and, if appropriate, introducing further amendments at the earliest opportunity.

4.4 During the early part of 2007 further discussions took place between union and employer association representatives and other Government Departments about the outstanding issues; these culminated in the formal consultation taking place between 8 November 2007 and 4 February 2008. More detailed information on the consultation process is contained in paragraphs 7.7 to 7.9.

5. Extent

5.1 This instrument applies in relation to England and Wales.

5.2 Statutory responsibility for the Teachers' Pension Schemes in Scotland and Northern Ireland rests, respectively, with the Scottish Public Pensions Agency ("SPPA") and the Department of Education, Northern Ireland.

6. European Convention on Human Rights

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 Superannuation Act 1972 contains the requirements under which regulations are made for the provision of public service pension schemes. The TPS is a statutory defined benefit scheme, whilst the Teachers' AVC Scheme is a statutory defined contributions scheme.

7.2 The Finance Act 2004, and subsequent HM Revenue and Customs ("HMRC") secondary legislation which took effect on 6 April 2006, introduced 'simplification' to the taxation system of both public and private pension schemes. This date became known as A-Day. Some of the changes were mandatory on all schemes e.g. the Lifetime Allowance and the Annual Allowance, which stipulated the level of savings towards pension provision which could be made without sanction charges being applied. Other changes were of a discretionary nature and it was left to scheme managers to decide whether they were appropriate for their particular arrangements.

7.3 As the teachers' pensions package was already the subject of a formal ongoing review, it was agreed that only the mandatory amendments would be made to the main scheme, with some discretionary amendments being introduced into the Teachers' AVC Scheme in recognition of it being a money-purchase arrangement e.g. lifting the contribution limits in line with the annual allowance and allowing the ability to take 25% of the fund value as a tax-free lump sum at the point of retirement. These amendments were included in two sets of amending regulations: the Teachers' Pensions (Miscellaneous Amendments) Regulations 2006 (SI 2006/736) and the Teachers' Pensions (Miscellaneous Amendments (No 2) Regulations (SI 2006/2214).

7.4 These amendments to the 1997 TPS Regulations and the 1994 AVC Regulations are being introduced to a) facilitate further flexibilities introduced by the Finance Act 2004 and HMRC A-Day legislation as mentioned in paragraph 7.2 above, and b) protect the main scheme against non-payment of member contributions, and, c) to make a number of technical amendments to both schemes.

7.5 Amendments to the <u>1994 AVC Regulations</u> are set out in Part 2 (An AVC is a pension top-up scheme, to provide benefits in addition to those available under the main scheme, and takes the form of a money-purchase arrangement with a private sector provider. In the case of the Teachers' AVC Scheme the provider is Prudential Assurance Co Ltd).

(1) Regulations 3 and 4 cover consequential amendments as a result of the 2006 Reform Amendments when the ability to enhance pension benefits by the purchase of past and current added years was replaced by the provision to purchase additional pension benefits.

(2) Regulation 5 provides the opportunity for the authorised provider of the pension to extend the period of beneficiary payments within the over-arching limits of the Finance Act 2004. This allows members of the Teachers' AVC scheme to elect to make provision for the payment of an ongoing pension to their beneficiaries if they were to die within 5 to 10 years of accessing their benefits.

(3) Regulation 6 includes two technical cross-reference changes. The first corrects the error highlighted by the Joint Committee on Statutory Instruments (see paragraph 3.1 above) and the second provides for the removal of a reference to a provision for a lump sum payment that no longer exists.

7.6 Amendments to the <u>1997 TPS Regulations</u> are set out in Part 3.

(1) The existing regulations provide that once contribution arrears have been identified, the default position (if collection of the arrears has not proved possible) is to deduct the amount due from retirement benefits. There are, however, financial accounting implications in managing such arrears over what could be a significant number of years. Regulation 8 therefore introduces, through new Regulation B6A, the ability to discount periods of service in benefit calculations for which member contributions have not been paid in full, where a demand has been made and that has not been met within a three year period. This new regulation would only be applied in the most exceptional cases once all other avenues for recovery of the arrears had been exhausted.

(2) Where only a part payment has been made, that must be refunded before the whole period of service is discounted. The regulations are still framed in such a way that pensionable employment is paramount and the Secretary of State will still be able to consider whether a deduction from benefits would be acceptable and appropriate at the point of retirement.

(3) Regulation 9(1) makes technical amendments to existing regulation C1 (salary on which contributions are payable) to reflect the fact that the Earnings Cap – the level (currently £112, 800) at which the amount of contributable salary is capped for pension purposes– is being lifted from the main scheme going forward from 1 April 2008 (although it can be retained in certain circumstances – see sub-paragraphs (5) and(6) below). This is in line with flexibilities introduced by the Finance Act 2004 and allows the full salary to be taken into account for benefit calculations.

(4) Regulation 9(2) inserts new regulation C1A into the 1997 TPS Regulations. This new regulation provides for the earnings cap to apply only to those whose contributable salary is subject to the cap immediately before 1 April 2008. It also provides for the cap to cease to apply to such persons in certain circumstances. Those circumstances include where the person elects (with the employer's consent) for the cap to be removed before 31 December 2008. The process of making an election will allow discussions to take place between those persons who are currently subject to the cap (approximately 20 members of the TPS, and who are mainly in the further and higher education sectors) and their employer to reach agreement on whether the earnings cap is to apply.

(5) If agreement is reached between the two parties that the earnings cap will not apply, written notice must be sent to the Secretary of State. At this point, the service apportionment calculation will take place (see paragraph 10 below). If no election is made by 31 December 2008, the earnings cap will continue to apply until the individual is subject to a change in post or a material change in their existing post; at this point the earnings cap will no longer apply and the service apportionment calculation will be carried out (again see paragraph 11 below).

(6) The only exception to this rule is for those individuals whose change in employer is as a result of a transfer of undertakings (TUPE) when previous remuneration arrangements would continue to apply.

(7) Regulation 9(4) introduces a calculation, by way of new regulation D5, which will apportion the period of service that had been subject to the earnings cap to enable the uncapped salary to be used in the benefit calculations for **all** the service at the point of retirement. This has the effect of reducing proportionately the service accumulated during the period when the earnings cap applied so that, at the point of retirement, a single salary figure can be used for calculation purposes. This avoids the necessity for multiple part-calculations on retirement based on different types of service (capped and uncapped) whilst protecting the main scheme against disproportionate amounts of benefits from being paid out to individuals against the level of contributions paid.

(8) Those individuals who have elections in place to purchase past added years (under previous main scheme provisions) should have the period of service purchased during the period of capped salary included within the aggregate of periods of capped reckonable service of the calculation. Any period of service purchased, as part of an ongoing election (the Reform Amendments removed the ability to vary existing elections), after the earnings cap is lifted will fall within the aggregate of periods of uncapped reckonable service but this will be bought on the same percentage of the **higher** uncapped salary.

(9) Regulation 9(5) is a technical change to the existing regulation E28 to ensure that adjustments are made to the calculation of family benefits when apportionment of service has taken place on the removal of the earnings cap.

(10) Regulation 11 enables members who have a normal pension age ("NPA") of 60 and who continue to work beyond that age (or those members' employers) to purchase additional pension benefits based on the costs in place for those who fall under the NPA 65 arrangements. This is to increase options for individuals to both enhance pension provision and to work longer in line with Government policy whilst also providing a mechanism for improved workforce planning through employers being able to exploit this provision as part of a teacher retention policy.

(11) Regulation 12 ensures those who enter pensionable employment on or after 1 January 2007) as a result of a TUPE/involuntary transfer within the public services will retain NPA60 when becoming members of the TPS if they were subject to a NPA of 60 in the previous scheme. An exception is made in the case of those persons who transfer from the Local Government Pension Scheme ("LGPS") where any consideration of rules within that scheme which may result in unreduced benefits being paid earlier than the scheme NPA (65) is taken account of by service credits at the point of transfer; this is a continuance of current practice. The occurrences of TUPE/involuntary transfers from the LGPS to the TPS are minimal.

(12) Regulation 13 amends regulation E33(2A) of the 1997 TPS Regulations to require those persons who submit an application for ill-health retirement benefits to do so within 6 months of leaving pensionable employment when being assessed against the criteria for partial incapacity benefits. This reflects existing practice.

(13) Under HMRC tax simplification legislation, which took effect on 6 April 2006 (see paragraph 7.2 above), certain payments would be classed as "unauthorised payments" and, depending on the circumstances, both the Scheme and member would be subject to "sanction charges" ranging from 15% to 50% of the payment made. To protect the TPS against the imposition of such charges, regulation E6(4) of the 1997 TPS Regulations restricts the amount of tax-free lump sum paid (should calculations prove that the level of lump sum would exceed the permitted maximum). Regulation 14 makes further amendments to regulation E6 to ensure that any excess amount is converted back into annual pension.

(14) Following discussions with HMRC and other public service pension schemes regulation 15 reinstates within E22(5) (Family benefits generally) the definition of “child” which was removed as part of the A-Day amendments to the main scheme regulations, with the addition of the word “financially” before ‘dependent’. For consistency with other schemes, clearance for this reinstatement to have retrospective effect from 6 April 2006 has been given by HM Treasury.

(15) Regulation 15(4) ensures that the restrospection does not affect those cases where payments have already been paid the between 6 April 2006 and 31 March 2008.

(16) From 1 April 2008, however, these cases will be revisited to ensure that the level of benefits paid to all eligible children from that date reflects the number of children entitled to share those benefits.

(17) Regulations 16 and 17 are self-explanatory.

(18) Section 12(4) of the Superannuation Act 1972 contains a requirement on schemes to offer members who would be placed in a worse position as a result of any of any scheme changes the option to elect for that regulation to not apply to them; regulation 18 provides members with a three month period in which to make such an election.

7.7 *Consultation* – As mentioned in paragraph 4.3 a formal consultation took place between November 2007 and February 2008. This involved three written communications (including a draft of the amending regulations) with approximately 80 stakeholders in accordance with the provisions of the Superannuation Act 1972. Copies of these communications were also placed on the Teachers’ Pensions website www.teacherspensions.co.uk using the ‘Announcements’ link where they were available to individual employers and members of the scheme and also the general public.

7.8 The Department also undertook two meetings with key employer and union representatives to discuss the issues, provide clarification and revisit the draft regulations as a result of the comments made.

7.9 Following the formal consultation the Department received six written responses – four from employer representatives, one from the collective teacher unions and one from another Government Department (SPPA). Of the employers – one had no comment, two had observations that have now been reflected in the final amending regulations and one raised the issue of refunding employer contributions alongside discounted service (see paragraph 7.6(2)) which will be dealt with in correspondence. The teacher union concern has been addressed in the wording of “change of post” in relation to the removal of the earnings cap and we are providing assurances about the way LGPS transfers are being dealt with by scheme actuaries. The response from the SPPA simply sought clarification on a number of issues, which has been provided.

7.10 *Guidance* – The main scheme administrator, Capita Teachers' Pensions (TP), is working closely with Departmental communication colleagues to update employer training seminars to reflect the specifics of these amendments. Information is being supplied through TP Newsletters, main scheme fact sheets and leaflets and the TP website (mentioned in paragraph 7.7). They have also undertaken to perform a targeted mailing to the small number of employees and employers who are affected by the removal of the earnings cap to inform them of options and the transition arrangements. The Department will be issuing a letter to all main scheme employers shortly after the regulations come into force (Teachers' Pensions Letter 01/08) to explain the implications of all of the changes.

7.11 *Consolidation* – See paragraphs 3.2 and 3.3 above for details. Consultation on the consolidation of the 1997 TPS Regulations and subsequent amendments began on 19 December 2007 and is being carried out in stages. Two letters have been sent to the stakeholders mentioned in paragraph 7.7 above covering five sets of the regulations; copies are available on the TP website.

8. Impact

8.1 An impact assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2. There may be a small impact on a small number of public sector employers in relation to a rise in employer contributions as a result of the removal of the earnings cap but this change reflects the wishes of the employers and may be balanced out by a reduction in local remuneration arrangements which will no longer be necessary.

9. Contact

If you have any queries regarding this statutory instrument, please contact Mrs Christine Kane at the Department for Children, Schools and Families - Tel: 01325-391008; or Email: christine.kane@dcsf.gsi.gov.uk

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