# EXPLANATORY MEMORANDUM TO

# THE TEACHERS' PENSIONS (MISCELLANEOUS AMENDMENTS) REGULATIONS 2011

## 2011 No. 614

**1.** This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 On the Emergency Budget on 22 June 2010, the Chancellor announced that increases in pensions, including public service pensions, would be calculated by reference to the consumer prices index (CPI) rather than the retail prices index (RPI). The main purpose of the instrument is to amend various provisions in the Teachers' Pensions Regulations 2010 that refer to RPI and to substitute references to CPI.

2.2 Similarly, the instrument amends the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994 to allow a person to request that their teachers' additional voluntary contributions (TAVC) fund be used to purchase an annuity that is index-linked to a reference other than RPI.

2.3 Also, the restriction that prevented certain people from transferring out their TAVC fund to another pension arrangement has been removed. It had become evident from recent representations from members that the restriction was preventing members from using their TAVC fund in the way that best suited their financial needs.

2.4 In addition, the Teachers' Pensions Regulations 2010 are being updated with references, where relevant, to the new rights to additional paternity leave and additional statutory paternity pay. The standard rate of interest set out in those Regulations is being amended to match the discount rate used in pension valuations. And a number of minor typographical corrections are being made to those Regulations.

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

3.1 None.

## 4. Legislative Context

4.1 The Teachers' Pension Scheme is governed by regulations made under the Superannuation Act 1972, primarily the Teachers' Pensions Regulations 2010. The Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994, also made under that Act, make provision for members of the Teachers' Pension Scheme to make additional voluntary contributions, and for the application of the funds resulting from investment of those contributions.

4.2 Orders providing for increases to official pensions are made by the Treasury under section 59 of the Social Security Pensions Act 1975; under section 59(7) of that Act, section 59 has effect as if it were contained in the Pensions (Increase) Act 1971, which makes provision for increases and supplements to be paid on certain pensions and related benefits.

## 5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

## 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

- **What is being done and why**

7.1 **Schedule 1 amends the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994 as follows**:

(1) **Paragraphs 1 and 3 - Annuity options**: these paragraphs amend the regulations that set out the options for scheme members with regard to the type of annuity that can be purchased. Until now, the only option for purchase of an indexed-linked annuity has been for an annuity linked to RPI. The regulations have been amended to allow the purchase, subject to availability, of an annuity linked to an index other than RPI.

(2) **Paragraph 2 - Transfer out of Teacher Additional Voluntary Contributions**: this paragraph amends the provisions dealing with the transfer of TAVC fund investments to another registered pension scheme. The amendment removes the restriction which prevented retired members and certain deferred scheme members (people who left the Teachers' Pension Scheme before retirement) from taking a transfer value. Any person who has not yet elected to purchase an annuity with their TAVC fund will, in future, have the option to transfer the fund to another registered pension scheme.

7.2 **Schedule 2 amends the Teachers' Pensions Regulations 2010 as follows:**

(1) **Paragraph 1. Additional Paternity Leave and Additional Statutory Paternity Pay –** this is a set of technical amendments to recognise for the purposes of the Teachers' Pension Scheme the new rights to additional paternity leave and additional statutory paternity pay being introduced in April 2011.

(2) **Paragraph 2**. **Teachers in the reserved forces -** this amends the regulation under which a scheme member who is called up for military duties may elect that the period whilst on duty is treated as reckonable service for the purposes of the Teachers' Pension Scheme. In these cases, the scheme member pays contributions on a notional salary for the period that he or she is on duty. So far, the notional contributable salary has been uprated annually by reference to RPI and this will be the case for people away on tour on 1 April 2011. But, from 1 April 2012, and thereafter, the notional contributable salary will be increased as if it were an official pension under the Pensions (Increase) Act 1971; orders providing for increases to official pensions are made by the Treasury under section 59 of the Social Security Pensions Act 1975. The percentage increases in such orders will be calculated in future on the basis of CPI rather than RPI.

(3) **Paragraph 4. Restriction on average salary used to calculate retirement benefits** - this makes an amendment to provisions dealing with the calculation of average salary. For these purposes, salary increases are limited to the greater of 10% and an index-linked figure of £5,000. This provision was first introduced on 1 September 2010, and the £5,000 limit was to be uprated in accordance with RPI. The amendment means that from April 2012 and thereafter, the baseline £5,000 limit will be increased as if it were an official pension, i.e. (as above) by percentage increases set out in orders made by the Treasury and calculated in future on the basis of CPI rather than RPI.

(4) **Paragraphs 6, 7, 8 and 12. Additional Pension (AP) -** paragraphs 6, 7 and 8 amend the regulations that uprate the value of AP that is purchased by a scheme member or a member's employer. A feature of the AP arrangements in the Teachers' Pension Scheme is that the AP is index-linked between the date of purchase and the date on which the scheme member draws the AP benefits. The existing regulations provide that the index-linking would be in line with RPI. This will remain the case for elections to purchase AP made on, or before, 22 June 2010 (the date of the Chancellor's announcement that public service pensions would, in future, be indexed in line with CPI). For AP elections made after 22 June 2010, the indexation between the date of purchase and the date the AP becomes payable will be in line with CPI. The regulations refer to CPI directly rather than to increases under the Pensions (Increase) Act 1971 (as in other places) because CPI is calculated on a monthly basis and, therefore, provides a more accurate and up-to-date indexation uplift to the AP amount.

The reference to 'X' in the amendments is to avoid amounts being uprated twice over the same period: where a scheme member becomes a deferred member (a person who leaves the Scheme before retirement), the AP becomes a deferred pension which is automatically indexed under the Pensions (Increase) Act 1971. Without the reference to 'X', the AP would be index-linked by both the Teachers' Pensions Regulations and the Pensions (Increase) Act during the period of deferment.

The Department is aware that there is a practical issue where scheme members have made AP elections made since 22 June 2010 and contributions have been paid on the assumption of RPI indexation . The Scheme actuary has been commissioned to provide CPI-based factors and the Department will arrange for the Scheme administrator, Teachers' Pensions, to review these elections – and arrange refunds or adjust the AP purchased - if it is found that the difference in the factors is material.

The amendment made by paragraph 12 deals with the maximum amount of AP that a scheme member can purchase by one or more elections. The maximum was set at £5,000 when the AP provisions were first introduced in January 2007 but is subject to annual uprating with rounding to the nearest £100; the current maximum is £5,400. From 1 April 2011, the maximum will be uprated under the Pensions (Increase) Act 1971; as above, this means indexation based on the CPI.

(5) **Paragraph 10. Standard rate of interest** - this amends the regulation which sets the interest rate that is charged when contributions are paid late to the Teachers' Pension Scheme. From April 2011, the new rate will be the Discount Rate but, in practice, this means no actual change of rate until HM Treasury have completed their consultation on the Discount Rate[1] and decided what -if any - change to make.

(6) **Paragraph 11. Glossary of expressions** - self explanatory.

(7) **Paragraph 13. Outward transfers -** this amendment permits adjustment of transfer values where a scheme member has requested that an amount representing their accrued pension rights be transferred to another pension scheme. The scheme actuary has provided new factors based on CPI, and these include different factors depending on whether or not the receiving scheme participates in the public service transfer club (a "club scheme"). There is no detriment to the individual scheme member resulting from whether the transfer is to a club scheme or not.

(8) **Paragraphs 3, 4(2), 5, 9 and 14** correct minor typographical errors.

- Consolidation

7.2 This is the first set of amendments to the Teachers' Pensions Regulations 2010 which came into force on 1 September 2010, and there are no plans to consolidate in the immediate future.

7.3 Consolidation of the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994 is being built into the Department's Business Plan for the coming year. Timing will depend on the outcome of the Final Report

[1] See http://www.hm-treasury.gov.uk/consult_unfunded_pensions.htm.

of the Independent Public Service Pensions Commission chaired by Lord Hutton (due in March).

## 8. Consultation outcome

8.1 The Department launched a consultation on the amendments to switch from RPI to CPI on 2 December 2010 with a closing date of 21 February 2011. This allowed for a consultation period three days short of twelve weeks. The end date of 21 February 2011 was chosen to allow time to consider amendments arising from the consultation, and for the practicalities of making and laying the instrument. Consultees comprised all bodies representing employers and scheme members and other Government Departments (including HM Treasury) that have an interest in the Teachers' Pension Scheme.

8.2 Draft regulations were distributed to consultees on 21 January 2011 with a full commentary on the proposed amendments.

8.3 A supplementary consultation letter in relation to AVC transfer values was sent on 11 February. This was an exceptionally short period for consultation, but the Department considered it better to combine this with the set of amendments that were already in the pipeline so that the members affected by the restriction could benefit sooner. The alternative was to prepare a separate set of amendments with a later implementation date. There has been increasing pressure, particularly from retired Scheme members, to allow these transfers so that the members concerned can take advantage of new products on the pensions market which offer flexibility on the use of their TAVC funds and which better suit their financial needs. The amendment brings the TAVC arrangements into line with the 'A Day' (6 April 2006) changes to the tax regime governing pensions. There is no adverse impact on the public purse because AVCs relate solely to the scheme member's personal money purchase pot. These proposals have not been met with any negative comment.

8.4 Responses to the consultation on the amendments to these regulations have mainly come from the teacher and lecturer unions who represent members of the Scheme. In summary, the responses opposed the switch from RPI to CPI as the reference index for increasing public service pensions (i.e. they constituted objections to the principle set out in the Chancellor's announcement on 22 June 2010). This was expected as a number of the unions involved had mounted a correspondence campaign against the Government's decision to move to using CPI. The Department considered that the representations did not amount to comments on the proposals for specific amendments to the regulations in question.

## 9. Guidance

9.1 No guidance is necessary with regard to the changes that deal with the switch from RPI to CPI but the scheme administrator, Teachers' Pensions (TP), will review scheme literature and the website to make sure that the new position is made clear. The TAVC provider, Prudential, will need to amend their processes and procedures to explain the new options, and the Department will work closely with Prudential and TP to manage scheme members' expectations about how quickly they can take advantage of these changes.

## 10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is Nil. There are no financial pressures on employers from these amendments.

10.3 An Impact Assessment has not been prepared for this instrument.

## 11. Regulating small business

11.1 The legislation does not apply to small business.

## 12. Monitoring & review

Not applicable. The changes that remove RPI uprating are consequent on the Governments' decision that CPI is a more appropriate reference index.

**13. Contact: Mrs Valerie Tooth** at the Department for Education Tel: 01325 735696 or email: valerie.tooth@education.gsi.gov.uk can answer any queries regarding the instrument.