

## EXPLANATORY MEMORANDUM TO

### THE TEACHERS' PENSION (AMENDMENT) REGULATIONS 2012

2012 No. 673

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 The instrument makes a number of predominantly miscellaneous amendments to the Teachers' Pension Regulations 2010. The miscellaneous amendments include clarification of the benefits in kind that should be taken into account when determining salary for pension contribution purposes; removal of age restrictions on lump sum and ill health commutation; an updated definition of the term Academies and the replacement of a reference to the General Teaching Council for England, which is to be abolished, with a reference to the Secretary of State. The substantive amendment is the introduction of tiered salary bands for pension contributions and increased contribution rates for the majority of salary bands.

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

3.1 None

#### 4. Legislative Context

4.1 The Teachers' Pension Scheme (TPS) is governed by regulations made under the Superannuation Act 1972, primarily the Teachers' Pension Regulations 2010 (SI 2010/990). This instrument is being made to amend the Teachers' Pensions Regulations 2010 in order to provide clarity on terms and procedures and to bring about changes required to meet government policy

4.3 The Finance Act 2011 lifted restrictions on paying certain lump sums to those aged over 75 and amendments are included to allow members of the TPS to benefit from that.

4.4 This instrument is to provide amendments to the way members' pension contributions are calculated.

## **5. Territorial Extent and Application**

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 Teachers' Pensions Regulations 2010 govern the provision and administration of pensions for teachers and qualifying members in England and Wales.

7.2 At the Spending Review on 20 October 2010 the Government proposed increases to employee contribution rates that would lead to savings of £2.8bn a year by 2014-15, to be phased in from April 2012. The TPS is required to make an average 3.2% increase in contributions with 40% of the increase being achieved in the 2012-13 financial year.

7.3 This instrument provides for changes in the contribution rate in order to meet those savings with tiered contribution rates by salary bands to protect the lower paid.

7.4 It also provides a number of minor amendments required to ensure the TPS aligns with the Finance Act 2011 and to provide clarification on pension administration procedure.

7.5 Regulation 3 clarifies that heating, lighting and water provided free of charge and council tax paid do not count towards contributable salary for the purposes of calculating contributions. This is not a change in policy as excluding these benefits is current practice, it does however remove ambiguity within the current regulations.

7.6 Regulation 4 clarifies that where a pension has been overpaid, the payment may be recovered in the next and subsequent payment years until the full debt is repaid.

7.7 Regulations 5, 6 and 7 remove the limitation on a person obtaining a lump sum payment and ill health commutation after the age of 75. This brings the TPS in line with the Finance Act 2011.

7.8 Regulation 8, removes the limitation on a person obtaining a lump sum in respect of family benefit relating to a person who had died after reaching the age of 75 again to bring the TPS in line with the provisions of the Finance Act 2011

7.9 Regulations 9 and 10 update references to Academies and Academy agreements in

accordance with the Academies Act 2010.

7.10 Regulation 11 changes the ordinary contribution rates payable by scheme members and explains that contributions are to be calculated monthly, by reference to the full-time equivalent annual rate of each employee's contributable salary for that month. This regulation provides for the first year of contribution increases announced by the government as part of the October 2010 spending review. Further amendments will be required in subsequent years following discussion with unions and consultation.

7.11 Regulation 12 makes provision for rounding to the nearest £100 when determining the annual uplift to the amount of additional pension that can be purchased

7.12 Regulation 13 substitutes, for a reference to the General Teaching Council for England which is being abolished on 1st April 2012 under the Education Act 2011, a reference to the Secretary of State

#### Consolidation

7.2 This is the second set of amendments to the Teachers' Pensions Regulations which came into force on 1 September 2010, the first being the Teachers' Pensions (Miscellaneous Amendments) Regulations 2011 (SI 2011/614). There are no immediate plans for the department to consolidate these regulations

The on-going review of the TPS is expected to lead to a reformed scheme and regulations taking effect in 2015.

## 8. Consultation outcome

8.1 The Department launched a consultation on the amendments to the way members' ordinary contributions are calculated on 28 July 2011 with a closing date of 20 October 2011. This allowed for a consultation period of exactly 12 weeks.

8.2 Responses to the consultation came mainly from unions and employer representatives. Teacher unions and employers did not propose modifications to the Department's design for implementing tiered contributions, albeit the teacher unions made it clear that this was because of their broader opposition to the policy. The employers were equally positive but did indicate that calculating monthly contributions would be more difficult. A full analysis of consultation responses is available on the Department's website

at:

<http://www.education.gov.uk/consultations/index.cfm?action=conResults&consultationId=1768&external=no&menu=3>

8.3 The Department originally consulted on these arrangements on 13 September however due to primary legislation from DWP not being available we amended the

consultation on 14 November 2011. The consultation closed on 6 December 2011. In total 5 responses were received, all of which were positive.

## **9. Guidance**

9.1 It will not be necessary for the Department to prepare guidance on the amendments contained within this instrument. The main change is the contribution increases which the pension administrator (Capita) will be leading on for guidance and communications.

## **10. Impact**

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

10.2 The impact on the public sector is nil.

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**

12.1 The substantive amendment is the introduction of tiered salary bands for pension contributions and increased contribution rates for the majority of salary bands. In designing the tiers the Department aims to minimise the impact on members leaving the scheme (opting out) as a result of the increase.

12.2 Relevant data and information will be collated to inform a review of tiering structures in advance of the Department consulting on contribution increases for 2013-14 onwards. Information will include data on opt-out and also an assessment of members' expected behaviour in response to further increases in contribution rates. This work will be taken forward within the context of the Government's wider consideration of tiering structures across public service pension schemes.

## **13. Contact**

John Brown at the Department for Education Tel: 01325 735495 or email: john.brown@education.gsi.gov.uk can answer any queries regarding the instrument.