EXPLANATORY MEMORANDUM TO

THE TEACHERS' PENSIONS (MISCELLANEOUS AMENDMENTS) (No.2) REGULATIONS 2014

2014 No. 2651

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 This instrument amends the Teachers' Pensions Regulations 2010 ("the 2010 Regulations") to ensure effective operation between the 2010 Regulations and the Teachers' Pension Scheme Regulations 2014 ("the 2014 Regulations"). The amendments include changes to the employer and member contribution rates to bring them in line with the 2014 Regulations and amendments to clarify the operation of the existing scheme.

3. Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]

3.1 None.

4. Legislative Context

4.1 The 2010 Regulations are being amended to allow for the efficient operation of the existing Teachers' Pension Scheme once the reformed Teachers' Pension Scheme comes into force on 1 April 2015. The reformed Teachers' Pension Scheme is being introduced following recommendations by Lord Hutton of Furness on the need to ensure public sector pension schemes remain sustainable.

4.2 This SI is further being amended to provide clarity to the operation of particular functions, for example, the discretion of the Secretary of State to re-instate a pension previously stopped upon marriage, civil partnership or cohabitation.

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

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 Regulations 9, 14, 15, 23, 26 and 27 provide amendments which are consequential to the coming into force of the 2014 Regulations. The amendments include:

- the introduction of an administration charge, payable by employers as a percentage of their members' pensionable earnings;
- a change to the way average salary is determined for the purpose of establishing when a phased retirement pension ceases to be payable;
- the inclusion of pension earned in the Teachers' Pension Scheme career average provisions, which are to be introduced in April 2015 by the 2014 Regulations, when determining if pension should be stopped in a particular tax year following re-employment;
- Changes to the rate of contributions payable by both members and employers in line with the rates set out in the 2014 Regulations; and
- Removal of a restriction that prevents some members from accruing pensionable service of more than 40 years.

7.3 Regulations 8, 10, 11, 12, 13, 17, 21, 25 and 29 provide clarification to existing regulations ensuring that members and employers are able to understand and implement scheme requirements appropriately. These clarifications include:

- An updated definition of "permitted maximum" following the lapse of the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006;
- Clarification on the operation of transfers into and out of the scheme;
- Clarification as to when the Secretary of State may allow a pension to continue in circumstances where that pension would otherwise cease to be payable, or to reinstate such a pension following cessation of a further marriage, civil partnership or cohabitation; and
- Clarification that the NPA for former members of the NHS scheme who transferred on TUPE terms to the teachers' scheme will retain a normal pension age of 55 in the event of compulsory redundancy before age 50.

7.4 Further miscellaneous amendments are also provide for as follows:

- Regulation 7 removes an erroneous reference to the Finance Act 2004, which does not apply to refunds of overpaid contributions towards residential emoluments;
- Regulation 16 amends the method for calculating pension where a member has returned to pensionable service following a period where the member was in receipt of an ill-health pension. The amendment makes the process easier to understand and ensures the correct amount of over-payment can be recovered;
- Regulation 19 future proofs the definition of "trivial commutation lump sum death benefit" by referencing the Finance Act 2004 thus ensuring any future changes to this definition are immediately effective in these regulations;

- Regulation 20 provides for the inclusion of charges payable as a result of the member exceeding the annual allowance limit into the scheme pays provisions (defined in the Finance Act 2004). This therefore allows the scheme to pay the tax charge and reduce the member's benefits accordingly, where the member opts for that;
- Regulation 22 makes changes to the scheme membership conditions by allowing those employed in multi-academy trusts to join the scheme.

7.5 Regulations 3, 4, 5, 6, 18 and 24 make minor corrections to the existing regulations.

8. Consultation outcome

8.1 The Department ran a consultation from 28 April 2014 to 18 July 2014 which included the amendments mentioned above to the 2010 Regulations and further amendments to the 2014 Regulations. In total 18 responses were received. These included responses from teacher unions, colleges, local authorities, and employer representatives.

8.2 A significant number of respondents used this opportunity to question the need for reform of the Teachers' Pension Scheme in general. Where respondents expressed views in respect of the consultation questions, the majority of responses were broadly supportive of the proposals.

8.3 A number of respondents offered suggestions in relation to the proposed structure for member contribution rates. The suggestions varied from a preference for a single tier structure to a preference to retaining an eight tier structure. Respondents generally agreed with the proposal to base member contribution rates on the actual salary earned rather than the current provision which sets the contribution rate on the member's full-time equivalent salary. The Department has considered all remarks in full and indeed considered them in developing the structure. The proposed structure takes account of the views expressed by unions and the Department considers it best meets the current membership where a significant number of members will remain in the final salary scheme or have large amounts of past service in that scheme. The Department has further committed to revisit this issue once the number of final salary scheme members begins to reduce.

8.4 Respondents were generally agreeable with the proposals for transfers into and out of the scheme. The respondents did, however, suggest that members be given a longer period to elect to replicate service accrued in the schemes for teachers in Scotland and Northern Ireland under existing favourable "comparable United Kingdom scheme" arrangements. The Department accepted this view and the regulations now allow for a period of 2 years from 1st April 2015 rather than 1 year as proposed in the consultation. The indefinite period to apply for a Club transfer in respect of teachers in the Channel Islands and the Isle of Man will also cease on 31 March 2017. These extended timescales only apply to members who join the Teachers' Pension Scheme on or before 31 March 2015.

8.5 The full consultation response can be access at https://www.gov.uk/government/collections/teachers-pension-scheme

9. Guidance

9.1 A bespoke website dedicated to information and supporting resources has been available since April 2014. Resources on the site include factsheets, videos, calculators, modellers and a dedicated toolkit. The website is supported by on-going digital communications to both members and employers and through direct engagement with employers through the provision of training resources. Members and employers are informed of the resources available to them through a series of email campaigns and through working with key partners to ensure all those affected have an understanding of those changes in the build-up to April 2015. The website can be accessed at https://www.teacherspensions.co.uk/reform/employers/reform-employer-hub.aspx

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 changes to this SI, coupled with amendments tabled for the 2014 Regulations, will ensure a smooth transition from the current Teachers' Pension Scheme, to the reformed Teachers' Pension Scheme.

13. Contact

Jeffrey Rogerson at the Department for Education (Tel: 01325 735682 or email: Jeffrey.rogerson@education.gsi.gov.uk) can answer any queries regarding the instrument.