# EXPLANATORY MEMORANDUM TO

# THE TEACHERS' PENSIONS ETC (REFORM AMENDMENTS) REGULATIONS 2006

## 2006 No. 3122

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

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

## 2. Description

2.1 This instrument amends the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994 ("the 1994 AVC Regulations"), the Teachers' Pensions Regulations 1997 ("the 1997 TPS Regulations"), and the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997 ("the 1997 PRC Regulations") to take account of the changes being made as part of the reform of the Teachers' Pension Scheme ("TPS"). In this document, "the main scheme" means the TPS.

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

3.1 It is intended to consolidate the 1997 TPS Regulations, with a view to consolidated regulations being made in 2008.

## 4. Legislative background

4.1 In December 2002, the Government published a Green Paper entitled 'Simplicity, security and choice: Working and saving for retirement'; this contained proposals and recommendations to encourage people to work longer and save more for retirement. In June 2003, in 'Working and saving for retirement - action on occupational pensions' a recommendation was made that all public service pension schemes should be reviewed. The Government was of the view that normal pension age should be increased, and schemes changed to reflect improved longevity and modern working patterns. Changes were particularly necessary for public sector pension schemes, to ensure financial sustainability in the longer term, and to meet the needs of an increasingly diverse, and modern, workforce.

4.2 A wide-ranging review of the TPS started in November 2003, with the first consultation exercise taking place between September and December 2004. All negotiations were put on hold until after the May 2005 General Election, and following a series of Public Services Forum meetings, an agreement was reached on 18 October 2005 between Government and the TUC on the framework for reform of public-service pension schemes. This enabled fresh negotiations to begin with teacher employer organisations and teacher unions. The second consultation - on a package of reforms that had been agreed between Government, unions and employers - took place between 17 May and 9 August 2006.

## 5. Extent

5.1 This instrument applies in relation 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 amendments to the 1994 AVC Regulations, the 1997 TPS Regulations and the 1997 PRC Regulations are being introduced to facilitate the introductions of a normal pension age (NPA) of 65 for new entrants from 1 January 2007 and a teachers' pension reform package for both existing members and new entrants.

7.2 Amendments to the 1994 AVC Regulations are contained within Schedule 1. (An AVC is a pension top-up scheme, in addition to main scheme benefits, and takes the form of a money-purchase arrangement with a private sector provider.)

(1) Schedule 1 paragraph 1 inserts a definition of normal pension age giving it the same meaning as that within the 1997 TPS Regulations. The definition of "retire" has been removed to reflect the change in approach to retirement and the fact that as the AVC scheme is regarded, for tax purposes, as a separate entity from the main scheme and so AVC benefits can be accessed independently of main scheme benefits (see Schedule 1 paragraph 4). Schedule 1 paragraph 1(b) amends regulation 2 to permit contributors to nominate a person in whose favour a nomination as a surviving nominated partner under regulation E22A of the 1997 TPS Regulations has effect to receive a benefit.

(2) Schedule 1 paragraph 2 amends regulation 5(4) which stipulates that anyone working beyond age 60 has to elect annually to pay further contributions to the AVC scheme. This reflects the fact that the TPS will have two normal pension ages that will apply from 1 January 2007.

(3) Schedule 1 paragraph 3 – a technical amendment to remove reference to a regulation that was deleted by SI 2006/736.

(4) Schedule 1 paragraph 4 amends regulation 12. The amendments introduce the term 'relevant date' which enables the benefits from the AVC scheme to be realised separately from the main scheme and any time after reaching the age of 55. The exceptions to this age requirement are when the main scheme benefits have been paid earlier through regulation E4 of the main scheme regulations e.g. ill health or premature retirement, when AVC benefits can be paid earlier.

(5) Schedule 1 paragraph 4(d) amends the provisions relating to the payment of the balance of a pension after a person's death, where the person has notified the pension provider that he wishes the pension to continue if he dies within 5 years. In place of the current provision whereby the balance is paid as a lump sum (which would be an unauthorised payment under the Finance Act 2004) the method of payment of the balance is at the discretion of the pension provider.

(6) Schedule 1 paragraph 5 makes similar changes in relation to arrangements created through a pension-sharing order on divorce.

(7) The Finance Act 2006 amends the Finance Act 2004 to provide that from 6 April 2006 where individuals who use their tax-free lump sum, as a result of accessing retirement scheme benefits, to invest in other pension-saving vehicles, except where a low value exemptions apply, the lump sum will be an "unauthorised payment" and in consequence subject to tax charges.

Consequently Schedule 1 paragraph 6 amends existing regulation 16 by introducing a declaration to the application form to access the accumulated AVC fund. To protect the scheme from sanction charges which might otherwise be imposed by HMRC, in respect of an unauthorised payment the declaration will ask the individual to confirm that he or she does not intend to re-cycle any lump sum into another pension-savings vehicle.

It also provides that, where an individual refuses to sign the declaration that the lump sum will not be recycled, any election made under the existing regulation 12 for the provision of a lump sum, may have no effect and the whole accumulated fund will then be used to purchase an annuity (pension) and no lump sum element would be made available.

7.3 Amendments to the 1997 PRC Regulations are contained within Schedule 2, and they give effect to the decision to remove the higher education (HE) sector from the scope of these Regulations.

(1) Schedule 2 paragraphs 1, 4 and 5 are drafting or consequential amendments.

(2) Schedule 2 paragraph 8 amends regulation 16 so that compensation payments for survivors (including payments made to surviving nominated partners) do not cease on remarriage where a teacher was in service after 31 December 2006, as with main scheme benefits.

(3) Schedule 2 paragraphs 2, 9, 11 and 12 amend regulations 3, 22 and 29 of the 1997 PRC Regulations to remove the reference to employment in the post-1992 universities (i.e. employment covered by paragraph 7 of Schedule 2 to the 1997 TPS Regulations) and teachers employed with a former maintained college of further or higher education who elected to remain in the TPS at the time the college merged with a USS university (i.e. employment covered by paragraph 25 of Schedule 2 to the 1997 TPS Regulations). This removes the requirement for the employers to pay mandatory compensation on premature retirement but provides them with flexibility to agree appropriate compensation that takes account of local circumstances.

(4) Schedule 2 paragraph 3 substitutes regulation 4(7)(b)(iii) to keep these regulations in line with the 1997 TPS Regulations. It also reflects the change of references to age 60 to "normal pension age", reflecting the amendments to the 1997 TPS Regulations.

(5) Schedule 2 paragraph 6 omits regulation 13 thus removing the ability to allocate part of annual compensation in the 1997 PRC regulations. This is a seldom-used provision, which given the extension to family benefits to encompass unmarried survivor nominated partners, is no longer relevant for the TPS.

Arrangements will remain in place whereby current allocation elections will be honoured (see Schedule 5, Part 2 paragraph 4).

(6) For the same reason as set out in paragraph 7.2(7) above Schedule 2 paragraph 10 inserts a new regulation 23A to allow the former employer (as 'the compensating authority') to require an individual to sign a declaration stating that the lump sum element to his or her mandatory premature retirement compensation will not be re-cycled into another pension-saving vehicle.

If the declaration is not received within a time scale specified by the compensating body, it gives that body the option of converting the lump sum payable to additional annual compensation using same factors as are used by the Secretary of State under regulation H6A of the 1997 TPS Regulations (see paragraph 7.4 (42) below).

7.4 Amendments to the 1997 TPS Regulations are contained within Schedule 3. They provide for changes to existing regulations, and, to accommodate the reform of the TPS, the introduction of new provisions.

(1) Schedule 3 paragraph 2 amends regulation B1 to provide that all part-time employment commencing on, or after, 1 January 2007 is automatically pensionable. If however a person was in non-pensionable part-time employment on 31 December 2006, that will remain the case, unless he makes a part-time election, or there is a change of employment. (Similarly, a person will remain in opted-out employment until such time as he opted back in under regulation B6.) The amendment to Schedule 10 is consequential.

(2) Schedule 3 paragraph 2(c) inserts regulation B1(4A) to provide that, from 1 January 2007 onwards, part-time employment that is concurrent with full-time pensionable employment is not pensionable, even if a person had previously made a part-time election. The definition of 'excluded employment' in Schedule 1 is amended accordingly.

(3) Schedule 3 paragraph 3 raises the upper age of the scheme to 75 and stipulates that anyone in receipt of an ill-health pension cannot also be in pensionable employment. Paragraph 3(c) of Schedule 3 omits paragraph (2) of regulation B4 because of the removal of the necessity for elected further employment (regulation B7).

(4) Schedule 3 paragraph 4 amends regulation B5 to make it clear that a person in concurrent employment can only opt out in relation to all of the employments. The amendment to the definition of 'excluded employment' in Schedule 1 is consequential.

(5) Schedule 3 paragraph 5 amends regulation B6 to cover persons who were in post-retirement employment before 1 January 2007, but had not made an election under regulation B7 that the employment should be pensionable. Such person's employment does not become pensionable automatically by virtue of the omission of regulation B7 (described below) but such a person can elect to join with a normal pension age of 65 (classed as a new entrant). The employer and employee can pay back contributions to cover earlier service.

(6) Schedule 3 paragraph 6 omits regulation B7, and has the effect of removing the

necessity for elections to be made for post-retirement employment to be considered pensionable. This results from the change that makes all service pensionable, unless individuals explicitly opt-out.

(7) Schedule 3 paragraph 7 makes consequential changes because of the removal of the provisions for buying current added years (“CAY”) and past added years (“PAY”). Paragraph (11) is omitted because the definition of the ‘retail prices index’ is now in Schedule 1 (see Schedule 3 paragraph 71). There are also consequential changes arising from the removal of elected further employment.

(8) Schedule 3 paragraphs 8 to 10 substitute regulation C3 which, together with the substituted regulation G5, sets out how the member contribution will be determined under the cost-sharing agreement reached during negotiations. It gives effect to the equal sharing of costs/savings from the 2008 TPS valuation onwards; the mechanism by which the cap on the employer contribution will be determined; and the increase in member and employer contribution rates from 1 January 2007.

(9) Schedule 3 paragraph 9 amends regulation C3A to make it clear that regulation C3A (which deals with back contributions when an election made under regulation B1 that employment should be pensionable has retrospective effect) applies to all elections under regulation B1, and not just to elections for part-time employment to be pensionable.

(10) Schedule 3 paragraph 11 inserts a new regulation C3C, which, together with the new Schedule 2A allows a member or his or her employer to make an election to purchase an amount of additional pension. The amount of additional pension purchased will be increased in line with RPI between the date of the election and the date the benefit is drawn (see the new regulation E5A inserted by paragraph 29 of Schedule 3). Once in payment, the additional pension will, in the same way as the main retirement pension, be uplifted in accordance with the Pensions Increase Act. The election can cover either personal benefits or personal and dependant benefits. The limits are specified in the new Schedule 2A. The text of the new Schedule 2A, is in Schedule 4.

(11) Schedule 3 paragraph 12 omits the provisions to purchase PAY by the member and the facility for the beneficiary to complete the payments on the early death of the member. Transitional arrangements are in place to cover those elections already in place. These provisions are being replaced by the provision to purchase additional pension benefits, see new regulation C3C, mentioned in (10 above).

(12) Schedule 3 paragraph 13 substitutes regulation C6, which, when taken with the existing Schedules 3 and 4 to the 1997 TPS Regulations, allows persons purchasing PAY to continue purchasing PAY until the end of the arrangement. There are amendments to Schedules 3 and 4 in paragraphs 73 to 76. The effect of the amendments is that it will not be possible for a person, who has made a PAY election, to alter the payment period or reduce the rate of additional contributions.

(13) Schedule 3 paragraph 15 omits regulation C9 and so removes the ability to purchase CAY (although transitional provisions in paragraph 9 of Schedule 5 allow for a person to continue to purchase CAY until the end of the

arrangement).

(14) Schedule 3 paragraph 17 amends regulation C11. This, together with Schedule 6 (which is amended by inserting new Part IIB) deals with payment of additional contributions to cover pre 1 January 2007 service which would not otherwise count for the purpose of paying a survivor's pension to the surviving partner of a member nominated in accordance with new regulation E22A.

(15) Schedule 3 paragraphs 18 to 23 are consequential amendments on the provisions mentioned above.

(16) Schedule 3 paragraph 24 inserts a new regulation EA1 which sets out the definitions of 'existing member', 'new entrant' and 'mixed service member'. It explains that any break in service of more than five years will result in a change in status for the teaching service of existing members, and that, to retain their normal pension age, 60 days' pensionable service or 30 days' reckonable service (whether continuous or not) over a rolling 12 month period starting within that five year period will be required. It also stipulates the definition of normal pension age in relation to each type of member. Accordingly there are several consequential amendments to the 1997 TPS Regulations whereby "the age of 60" is replaced by "the normal pension age" or "65$^{th}$ birthday" is added to "60$^{th}$ birthday".

(17) Schedule 3 paragraph 26 amends the current regulation E2 to introduce, in addition to the retirement pension, the ability to increase the amount of tax-free lump sum at retirement from the 3/80$^{th}$ currently allowed by exchange of annual pension for lump sum.

(18) Schedule 3 paragraph 27 amends the wording of regulation E3(2A), to reflect the removal of the requirement for an election to make a period of further employment to be pensionable.

(19) Schedule 3 paragraph 28 amends regulation E4, which deals with entitlement to benefits, by substituting "normal pension age" for "the age of 60" in several places. Other amendments to regulation E4 are described in sub-paragraphs (20) and (21).

(20) Schedule 3 paragraph 28(d)(ii) amends the current regulation E4 so that eligibility for ill-health benefits extends to those no longer in pensionable employment but who are on an employer authorised career break or are paying CAY contributions. It also caters for other deferred members who need to meet the total incapacity criteria to be eligible for ill-health retirement benefits.

(21) Schedule 3 paragraph 28(e) substitutes regulation E4(5) to provide for a future raising of the minimum retirement age (MRA) from 50 to 55 for existing members from 6 April 2010, except for those taking ill-health retirement. New entrant members from 6 April 2006 are already covered by an MRA of 55.

(22) Schedule 3 paragraph 29 inserts a new regulation E4A, substitutes regulation E5, inserts a new regulation E5A, substitutes regulation E6 and inserts new regulations E6A and E6B. Regulation E4A sets out the eligibility for the new phased retirement arrangements, while the substituted regulations E5 and E6 insert the differences in application between the 1/80$^{th}$ and 1/60$^{th}$ arrangements

in respect of pension and lump sum calculations. New Regulation E5(10) and (11) introduces actuarial enhancements for those who are covered by the normal pension age ("NPA") 65 arrangements (whether as a new entrant or with mixed service) and who work beyond NPA 65. It also introduces new regulation E6A which indicates the commutation factors to be applied to the tax-free lump sum conversions from pension and the requirement for it to be within the persons' 'permitted maximum' as defined in the Finance Act 2004. Detailed matters contained in these provisions include:

- Schedule 3 paragraph 29 substitutes regulation E4A in place of E5 and E6 to deal with phased retirement. Regulation E4A(2) and (3) defines the age, salary and employer certification conditions for entitlement to phased retirement. Regulation E4A(4) stipulates the number of, and time limits attached to, applications for phased retirement benefits. Regulation E4A(3)(c) allows for a six month gap to secure further employment at a salary level of 25% below that of the previous pensionable employment, and regulation E4(3)(c) recognises the possibility of a phased retirement in an educational institution but in a post which is outside the remit of the TPS.

- Schedule 3 paragraph 29 introduces new regulation E4A(5) which confirms the maximum of 75% of retirement benefits which can be taken on a phased retirement. Regulation E4A(7) recognises the possibility of mixed service and the ability to request a percentage of benefits from both NPA 60 and NPA 65 benefits.

- Schedule 3 paragraph 29 introduce new regulations E4A(8),(9) and (10), which respectively, confirm that the calculation of benefits takes account of all salaries up to the date of the phased retirement but only the percentage of service requested (the election percentage); how the second election percentage will be based on residual service from the first election plus the further service completed up to the date of the second phased retirement; and that actuarial deductions will apply for payments before NPA.

- Schedule 3 paragraph 29 new regulation E4A(11) provides that additional pension benefits (in full) can be drawn at the same time as a phased retirement (both actuarially reduced if applicable).

- Schedule 3 paragraph 29 inserts a new regulation E6B to deal with lump sums for persons aged 75 or over. Regulation E6(7) introduces the provision needed to comply with the Finance Act 2004 that lump sums cannot be paid to individuals aged over 75. Provisions in regulation E6B(1) and (2) confirm that, where a member's entitlement to a lump sum has been removed by the application of E6(7), that lump sum will be converted to a pension, payable from the date of receipt of application for benefits using a factor determined by the Secretary of State after having taken advice from the Government Actuary.

(23) Schedule 3 paragraph 31 amends the current regulation E8, so that existing service enhancements for ill-health retirement are only applied in respect of applications received before 6 January 2007. It also inserts new regulation E8A

to cater for those whose applications are received on, or after, 6 January 2007. E8A(2) details the conditions for enhancement to apply and E8A(3) to E8A(5) explain how enhancement will be calculated. Regulation E8A(6) confirms that enhancement will be calculated to an NPA of 65 in cases of mixed NPA 60 and NPA 65 service, and regulation E8A(7) confirms that the enhancement (Total Incapacity Benefit), although a separate benefit to the retirement pension (Partial Incapacity Benefit), is paid at the same time.

(24) Schedule 3 paragraph 33 omits regulation E11 thus removing the ability to allocate part of a member's pension to a dependant. It is seldom used, and it is no longer relevant. Arrangements will remain in place whereby current allocation elections will be honoured (Schedule 5, Part 3, paragraph 11). Paragraphs 58 and 80 of Schedule 3 contain consequential amendments.

(25) Schedule 3 paragraph 34 amends the current regulation E13 (so that it only relates to applications received before 6 January 2007) and inserts a new regulation E13A which deals with the position where a person has retired on the grounds of ill health but ceases to be incapacitated, whose application for ill health benefits was received on, or after, 6 January 2007. In essence, it sets out how those in receipt of total incapacity benefits can retain these benefits if they take up employment outside teaching but only if they provide a medical certificate confirming that total incapacity still exists. Otherwise, it replicates the existing regulation E13 in determining the dates from which incapacity has ceased and future retirement benefits become payable.

(26) Schedule 3 paragraph 35 - regulation E14 (abatement of retirement pension during further employment) is amended to reflect, where appropriate, the new average salary arrangements in the determination of a person's 'salary of reference'.

(27) Schedule 3 paragraphs 36 and 37 amend the current regulations E15 and E15A so that regulation E15 covers pensions previously paid under both regulations E8 and E8A and contain amendments consequential on the omission of regulation B7.

(28) Schedule 3 paragraph 38 raises the death grant to three times the average salary of the member who dies in pensionable employment on, or after, 1 January 2007.

(29) Schedule 3 paragraphs 38(a) and (c) to (e), 39, 40, 42, 43, 44, 45, 47 and 51(e),(h) and (i) make consequential amendments to regulations E20, E21, E22, E23, E24,E25, E26, E28, E31 and Schedule 1. By virtue of paragraph 46 the wording of regulations E27(2) and (2A) has been altered to clarify the periods of service which count for the purpose of a pension payable to widowers and to surviving civil partners where a transfer value has been accepted in respect of comparable British service.

(30) Schedule 3 paragraph 41: - new regulation E22A (nomination of partner) is inserted to enable a single scheme member who is in an exclusive, committed long-term relationship to nominate his or her partner (same-sex or opposite-sex) to receive a beneficiary's pension.

Paragraphs (1) to (3) prescribe the conditions that must be met for a partner to be nominated. The scheme member and the partner are required to make a joint declaration that prescribed conditions have been met (for a continuous period of two years) when the nomination is made.

Paragraph (4) deals with the circumstances under which a nomination ceases to have effect.

Paragraph (5) sets out the circumstances in which a person nominated in accordance with the new regulation becomes entitled to benefits under the scheme as a “surviving nominated partner” (SNP). The SNP will be required to provide evidence at death that the prescribed conditions are met.

(31) Schedule 3 paragraph 46 inserts regulation E27(2B) (relevant service) to define the relevant service that will count in the calculation of a SNP pension. Pensionable employment will automatically accrue from 1 January 2007 onwards, as will service credited on transfer-in for scheme members who enter pensionable employment on, or after, that date. Paragraph (d) caters for the specific terms under which transfers are received from other UK pension schemes for teachers.

(32) Schedule 3 paragraph 48 modifies regulation E29 (amount of children’s long term pensions) to deal with the rate of children’s pensions if a SNP pension is payable. If a SNP pension is payable, the children’s pension would be paid at the normal children’s pension rate instead of at the orphan’s rate.

(33) Schedule 3 paragraph 49 inserts new regulation E29A (additional dependant’s pension) to provide that, if the scheme member has purchased additional pension for survivor partner (widow/widower/civil partner/SNP) purposes, the rate of a survivor pension would be increased by half the rate of the additional pension purchased.

(34) Schedule 3 paragraph 50 amends regulation E30 (duration of long term-survivor pensions) so that survivor pensions are payable for the lifetime of the recipient. Widow, widower and civil partner pensions payable in respect of a member who retired from a date prior to 1 January 2007 will be remain liable to cessation on the recipient’s remarriage, civil partnership or cohabitation.

(35) Schedule 3 paragraph 51 - Paragraphs (1) and (2) of regulation E31 are substituted with new paragraphs (1) and (2) that provide for a new definition of average salary based on salary in the last 365 days of service.

A new paragraph (2A) is inserted to clarify that the person will benefit from the better of the average salary calculations in E31 and E31A.

Paragraph (5), which deals with irregular part-time employment, is amended to take account of the new paragraph numbering. There is no change of effect.

A new paragraph 10A is inserted, and paragraph (11) (which deals with excessive salary increases) is amended to provide that a restriction will not apply if the higher average salary is the salary derived from the three-year average. A restriction would only apply if:

(a) an excessive increase in contributable salary took place in the final three years of service (as per existing regulation E31(11); and

(b) if that increase resulted in a person's final year being the higher average salary.

Employers will continue to have the option to pay an additional contribution so that pension can be paid on an unrestricted final salary.

New paragraphs (14A) and (14B) are inserted to clarify the position on leap year days.

(36) Schedule 3 paragraph 52 (average salary – supplemental) describes the alternative average salary calculation which is based on the best 1095 consecutive days of service in the last 10 years, index linked up to the date when the average salary service ended. Sub-paragraphs (4) to (7) explain how this average salary works in conjunction with the Pensions Increase Act 1971 to provide the right level of benefits.

Sub-paragraph 8 describes how service need not be continuous but that it may be necessary to look back further than 10 years in order to achieve 1095 days of service. Sub paragraphs (9) and (10) repeat the leap year clarifications given in new regulations E31(14A) and (14B).

(37) Schedule 3 paragraph 53 amends regulation E32 by removing the 40 years limit on reckonable service by age 60 whilst retaining the overall 45 years service limit overall.

(38) Schedule 3 paragraph 54 amends regulation E33 which provides that an application for ill health retirement benefits must be countersigned by the person’s employer and make it clear that the relevant medical evidence, which supports the application, must accompany the application.

(39) Schedule 3 paragraph 55 amends regulation E34 to provide that no interest is payable on any late payment of phased retirement benefits under regulation E4A and to provide for the date from which interest is payable when ill-health pensions are restored retrospectively.

(40) Schedule 3 paragraph 60 substitutes regulation G5 (employers’ contributions). The employer contribution rate is determined from the next TPS valuation. The regulation also sets out the mechanism for determining what would or would not be shared and explains how it would be determined whether a change in employer contribution could be provided for within the employer contribution cap, or whether, and how, that cap would change.

Where further determinations have to be made by the Secretary of State, the regulations provide that the determination would follow consultation with teacher representatives and employers; and would be with the consent of the Treasury. An example of where an element of the cost change would neither be shared nor subject to the cap would be if there was a change to the discount rate applied under the funding mechanism on which the TPS valuation is conducted.

The regulation also provides that no further contributions are payable once a member has 45 years of reckonable service.

(41) Schedule 3 paragraph 62 amends regulation H1 which relates to ‘stepping down’ elections, which, with the introduction of the new average salary arrangements will no longer be necessary. The effect of the amendments is that a reduction in salary will have to take place before 1 January 2007 and an election must be made by 1 March 2007 for a member to make use of the current provision.

(42) For the same reason as set out in paragraph 7.2(7) Schedule 3 paragraph 64 inserts a new regulation H6A to introduce a requirement for a declaration to be signed prior to payment of benefits whereby the individual undertakes not to re-cycle any lump sum from the TPS into another pension-savings vehicle. If no declaration is received, any lump sum which would have been paid as a result of regulations E6 (pre-2007 and mixed service members) and I3 (pension credit members) may be converted to an additional pension. Where the payment would have been a lump sum paid as a result of regulations E4A (phased retirement benefits), or E6A or I5A (lump sum in place of part of pension), then the commutation election will have no effect.

(43) Schedule 3 paragraph 66 inserts a new regulation I2A which sets out the process for defining the NPA for a pension credit member and also for when the pension debit member has mixed service.

(44) Schedule 3 paragraph 67 makes clear that the lump sum amounting to three times the pension only relates to those pension credit members with an NPA 60.

(45) Schedule 3 paragraph 69 inserts a new regulation I5A which introduces a facility whereby the pension credit member will have the ability to commute pension to lump sum.

(46) Schedule 3 paragraph 71 amends Schedule 1 which contains definitions. It includes a definition of ‘permitted maximum’ in relation to the tax-free lump sum by reference to the Finance Act 2004. It also changes the definition of the ‘appropriate factor’ so that, instead of their being set out in tables in Schedule 9, the factors are determined from time to time by the Secretary of State (after taking advice from the Government Actuary). This approach, which is now common throughout the amending regulations, addresses the issue of reducing the need for formal legislative change at each minor amendment to factors. The removal of the many actuarial tables will also reduce the size and complexity of the regulations themselves.

(47) Schedule 3 paragraph 77 amends Schedule 6. The tables of factors for the payment of additional contributions to purchase pre-6 April 1988 service for widower and civil partner pension purposes have been taken out of Parts II and IIA of the Schedule. The relevant paragraphs now refer instead to “multipliers determined from time to time by the Secretary of State (after taking advice from the Government Actuary).” A new Part IIB is inserted into Schedule 6 to give scheme members who have made a SNP nomination and who are in pensionable employment, the opportunity to pay additional contributions to convert service before 1 January 2007. Scheme members wishing to pay additional contributions for SNP pension purposes are required to make a health declaration.

(48) Schedule 3 paragraph 78 omits Schedule 9 which contains early retirement factor tables. This links in with the definition of "appropriate factor" (see sub-paragraph (46) above). The tables containing each "appropriate factor" as determined from time to time will in future be made available on the Teachers' Pensions website.

(49) Schedule 4 inserts a new Schedule 2A; detailed provisions include:

- Paragraphs 2 to 5 allow for a member to make an election to buy additional pension either by a lump sum payment or by monthly deductions from salary, and to define the period over which the monthly contributions will be made. This period is limited to either 20 years or the member's NPA, whichever is sooner. Paragraph 7 provides for an election to be made to purchase additional pension in units of a value determined by the Secretary of State.

- Paragraph 8 of Schedule 2A provides that the member must make a health declaration when purchasing additional pension to protect the Scheme where the member is more likely to access ill health benefits or to have a reduced life expectancy.

- Paragraphs 11 to 16 of Schedule 2A allow for the employer of a member to elect to purchase additional pension on his or her behalf by means of a lump sum payment; Schedule 3 paragraph 61 makes a consequential amendment.

- Paragraphs 18 to 22 of Schedule 2A set out the maximum additional pension that can be purchased. This limit is initially £5,000 but will increase annually in line with retail prices and be subject to periodic review by HM Treasury.

- Paragraph 23 of Schedule 2A, taken together with paragraph 37 provides for the Secretary of State to determine the cost of purchasing additional pension. Paragraph 24 allows for the Secretary of State to vary the cost of purchasing additional pension and for any changes in the cost to be reflected in the payments made by members. Paragraphs 25 and 26 allow a member who is paying by monthly contributions to revoke the election that that has been made and to be credited with the additional pension having regard to contributions already paid.

- Paragraph 28 of Schedule 2A provides that, where a person ceases to be in pensionable employment before the end of the payment period, he or she may elect to make a lump sum payment to cover the remainder of the election or to receive additional pension equivalent to the contributions already made.

- Paragraph 31 of Schedule 2A provides for the return of contributions where a member becomes eligible for benefits through incapacity within one year of an election to buy added pension benefits. Where the retirement is more than 12 months after the election, the member will be credited with the benefits he or she had elected to purchase.

- Paragraphs 34 to 36 of Schedule 2A provide that, in the event of a member's death within one year of making an election, any contributions made by the member will be returned to his or her estate and any contributions from an employer will be returned to the employer. The member's dependants will not receive any additional benefits under that election. Where the death occurs after one year, the dependants will be credited with the full amount of the additional pension specified in the election.

(50) Schedule 5 contains transitional provisions. In particular paragraph 12 in Part 3 makes provision to:

(a) retain the existing terms of regulation E31 where a person left pensionable employment before 1 January 2007 and did not return to pensionable employment before becoming entitled to payment of retirement benefits; and

(b) to provide a two-year transitional period for Scheme members whose benefits become payable on, or after, 1 January 2007 and before 1 January 2009. In these cases, pension will be calculated on the better of the average salary under existing regulation E31 and the provisions of regulation E31 as amended.

7.5 Consultation - Following a long negotiation period with the teacher employer organisations, teacher and lecturer unions and other stakeholders, a 12 week public consultation exercise took place on the proposals to change the TPS arrangements between 17 May 2006 and 9 August 2006. The consultation was launched on the Department's consultation website, and promoted on the DfES website home page. The document was available to download both as a portable document format (pdf) and as a Word version. The consultation document was available in hard copy and was issued to the major stakeholders. It was also made available to anyone on request. Consultation responses could be made on line, electronically or by post.

7.6 Additionally, information was available about the consultation on the Teachers' Pensions and TeacherNet websites. Notification was also sent to all schools in England and Wales and to local authorities, with further promotion by further and higher education groups and their stakeholders, websites, magazines and newsletters. A joint statement from the DfES, supported by the teacher and lecturer unions and employer organisations, was published in the Times Education Supplement and Times Higher Education Supplement. Information appeared in the Training and Development Agency for Schools 'Return to Teaching' magazine as well as in 'Teachers' magazine.

7.7 Information appeared on the Welsh Assembly website and the consultation document was also translated into Welsh. Members of the cross-sector stakeholder communication group arranged for information to be circulated to their own members in newsletters and supported by information on their websites.

7.8 In all, 149 responses were received to the consultation document from across all sectors.

Respondents were overall, supportive of the proposals in the consultation. They welcomed the additional flexibility that the proposals offered them in planning for members' retirement.

- 66% considered that the timing was right for the implementation of the new arrangements;

- the introduction of automatic TPS membership was welcomed, with 91% being heavily in favour of the proposal as this would avoid part-time members of staff forgetting to 'opt in';

- 78% respondents were in favour of the proposal for changes made to the salary used for calculating pension benefits;

- 58% of respondents agreed with proposals for buying additional pension benefits;

- 69% agreed with the proposals for phased retirement;

- 85% of respondents gave widespread support for the proposals for surviving partner benefits;

- The ill-health proposals were supported by 77% of respondents who agreed with the two-tiered approach to ill-health retirement benefits;

- 64% of respondents agreed with the increase to contribution rates, they felt the increases were justified by the improvements to the Scheme.

In the main, any concerns were drawn from personal circumstances that demonstrated a lack of understanding of the Scheme provisions generally. Such concerns have been addressed in correspondence.

7.9 Following the end of the consultation exercise in August 2006, draft regulations were prepared and circulated for comment to the key stakeholders' group. Several meetings were held with union and employer representatives at which they were "walked through" tranches of the draft regulations.

7.10 Guidance – A Communications Group had been established comprising members from all the teacher and lecturer unions, individual employers and employer representatives, Prudential, Teachers' Pensions ("TP"), the Department and Scheme members. The group agreed a communication protocol, which sets out the need for consistency when promoting information about the TPS, and a strategy with plans covering the next three years.

7.11 The Department is working directly with TP - who administer the TPS on the Department's behalf - on a review of all Scheme literature and on the introduction of a new set of communication products to introduce the Scheme changes from 1 January 2007. This includes an Employer Toolkit; this is a handy reference guide for employers that includes a series of fact sheets to provide basic information for employees/members and guidance on communication planning, based on best practice, gathered from research across all sectors. A series of regional seminars to promote the Scheme changes directly to employers began in September 2006. Employers will also receive a newsletter setting out the main changes to the scheme and providing them with sources of additional information. There will be further seminars designed for union representatives.

7.12 The Group is working closely with all stakeholders to ensure that communications are relevant, and effective, and that they reach a varied audience in the most appropriate way. This includes updating the TP website and providing information in more modern formats. One example is by the DVD produced in partnership with Prudential, who administer the teachers' AVC scheme for TPS members. This promotes the Scheme to all teachers and encourages them to take the time to consider their retirement plans in view of the forthcoming changes. Approximately 30,000 copies of the DVD have been sent to all schools, colleges and new universities who have members in the TPS. Further evaluation of the impact of all this will take place next year; this will include direct liaison with employers and Scheme members by telephone and in focus groups.

7.13 Consolidation - A consolidation exercise is to take place during 2007; this will result in new consolidated sets of regulations being produced; it is intended that the new regulations will be made in 2008. An informal consolidated text has been prepared incorporating changes up to April 2006 and this has been shared with members' representatives on request. A new consolidated text is being prepared incorporating changes up to October 2006.

## 8. Impact

8.1 A Regulatory Impact Assessment (RIA) was fully considered before the consultation began. Although the proposals to change the TPS arrangements would impact on over 600,000 members, the package of reforms would deliver over £5b in savings over the long term, and thus secure the future sustainability of the TPS. As such, a full RIA was deemed unnecessary.

8.2 The impact on TPS members of combining scheme reforms and improvements with a retention of normal pension age of 60 for existing members will require an increase of 0.2% in the contribution rate for all members. In addition, to secure the sustainability of the TPS -

(i) the member contribution rate will increase by a further 0.2% as the members' share of the outcome of the 2004 TPS valuation, taking it to 6.4%;

(ii) the employer contribution rate will increase by 0.6%, following the 2004 valuation, taking it to 14.1%;

(iii) there will be an equal division between members and employers of any cost increases or savings that may result from future valuations;

(iv) there will be a ceiling of 14% on the employer contribution rate that will take effect from the 2008 valuation onwards;

(v) the equal division of cost increases or savings, and the ceiling of 14% on the employer contribution rate, will be reviewed in the light of any changes in the total contribution rate that arise from factors other than demographic experience, (for example, overriding legislative requirements).

8.3 Taking the above facts into account, the employer contribution rate will rise from 13.5% to 14.1%; and the employee contribution rate will rise from 6.0% to 6.4% with effect from 1 January 2007.

## 9. Contact

If you have any queries regarding this statutory instrument, please contact Mrs Christine Kane at the Department for Education and Skills -
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