

EXPLANATORY MEMORANDUM TO
THE TEACHERS' PENSIONS (AMENDMENT) (No. 2) REGULATIONS 2012

2012 No. 2270

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 technical changes to the statutory Teachers' Pension Scheme in order for the scheme to comply with the requirements of the Pensions Act 2008. These require employers to enrol eligible workers automatically into a pension scheme, with opt-out rights, and periodically to re-enrol opted-out workers.
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' Pensions Regulations 2010 (SI 2010/990) (the 2010 Regulations). This instrument amends the 2010 Regulations in order to facilitate the compliance of employers with the requirements of Part 1 of the Pensions Act 2008.
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 Pensions Act 2008 laid the foundations for a fundamental reform of workplace pensions by requiring every employer to automatically enrol their workers into a qualifying pension scheme, if they are not already in one, and to contribute to that pension. These reforms are being introduced on a rolling basis from October 2012 to February 2018, with larger employers (and, in turn, their staff) being subject to the new requirements first. Each employer has a date on which they are due to become subject to

these provisions of the Pensions Act 2008; this is referred to as a “staging date”, and is determined by PAYE scheme details.

- 7.2** Regulation 3 makes changes to the eligibility provisions in regulation 6 of the 2010 Regulations, specifically those categories of employment which are currently pensionable on election by the worker, as this is incompatible with automatic enrolment.
- 7.3** Regulation 4 makes further changes to eligibility provisions in regulation 7 of the 2010 Regulations, including bringing the lower age threshold for TPS membership down from 18 to 16.
- 7.4** Regulation 5 makes a minor change to regulation 8 of the 2010 Regulations, in view of the provision for members to opt in and out of membership of the TPS in respect of individual employment contracts.
- 7.5** Regulation 6 makes changes to the opt-out provisions in regulation 9 of the 2010 Regulations to include opting out following automatic enrolment.
- 7.6** Regulation 7 makes changes to the opt-in provisions, where these are no longer relevant due to automatic enrolment.
- 7.7** Regulation 8 makes minor changes to regulation 11 of the 2010 Regulations, to the provisions for the backdating of elections to opt-in.
- 7.8** Regulation 9 introduces definitions into the Glossary in Schedule 1 for “the Pensions Act 2008”, “automatic enrolment date” and “the Scheme”.

Consolidation

- 7.9** This is the third set of amendments to the Teachers’ Pensions Regulations which came into force on 1 September 2010. There are no immediate plans for the Department to consolidate these regulations.
- 7.10** The decision has been taken to make major reform to the TPS and work is under way on primary and secondary legislation for a new scheme which is expected to come into force in 2015.

8. Consultation outcome

- 8.1** The Department launched a consultation on the amendments to the eligibility criteria and opt in and out arrangements on 13 September 2011 with a closing date that was extended to 18 July 2012 to allow the Department for Work and Pension to complete changes to the overriding legislation (Regulations) in respect of this reform. This allowed for an extended consultation period of 10 months.

8.2 A total of four responses were received; two from employer representatives and two from teacher side representatives. These were supportive of the approach taken to implement these reforms in respect of TPS members. Individual replies have been drafted to address specific issues raised (which mainly involved requests for further guidance) and an overview of the responses will be available on the Department's website from 28 August 2012.

9. Guidance

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

10. Impact

10.1 There is no negative impact of this instrument on business, charities, voluntary bodies and the public sector. These changes will make it easier for the employers of teachers to comply with the requirements the Pensions Act 2008 places on them.

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

11. Regulating small business

11.1 To the extent that the legislation applies to small businesses as employers of members of the TPS this instrument is intended to facilitate their compliance with the Pensions Act 2008 requirements.

12. Monitoring & review

12.1 The pension administrator will monitor any impact of this instrument as part of their ongoing management of the scheme.

13. Contact

Karen Cammack at the Department for Education Tel: 01325 735318 or email: karen.cammack@education.gsi.gov.uk can answer queries regarding the instrument.