

department for  
**children, schools and families**

TPS Regulations Consultees

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Our Ref: File 53/63

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Dear Colleague

**The Teachers' Pensions (Amendment) Regulations 2008 and The Teachers' Superannuation (Additional Voluntary Contributions) (Amendment) Regulations 2008**

I am writing to invite your comments on a set of proposed amendments to the above regulations, which a) reflect the resolution of a couple of outstanding issues identified during the review of the Teachers' Pension Scheme (TPS); b) provide some simplification and greater clarity in some existing provisions of both the main scheme and the AVC regulations; and c) make a few technical corrections. A commentary on the main proposed amendments is attached.

The amending regulations are being prepared and I will be looking to send them to you before the Christmas break. It is intended that the amending regulations will come into force on 1 April 2008.

Comments are welcome on both the attached commentary and the draft regulations when they are circulated. They should be made in writing **by 30 January 2008** to:

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A copy of this document will be placed on the Teachers' Pensions website along with a list of the organisations being asked to take part in this consultation.

### *Premature Retirement*

Following the review of the Premature Retirement arrangements with representatives of employer and teacher associations, it has been concluded that no further changes need to be made to the current provisions. This is because it was agreed that the extension to the severance arrangements from October 2006 and the introduction from January 2007 of the provision for members or their employers to purchase up to £5000 additional annual pension provide, in addition to current arrangements, sufficient flexibilities to deal effectively with early terminations of employment.

With regards to the impact of age discrimination legislation, it was accepted that the Premature Retirement Compensation regulations do not breach the over-riding rules but that employers need to satisfy themselves that they can objectively justify any difference in compensation payments to individuals of different ages whose employment is being terminated early.

Yours faithfully

Christine Kane  
Pensions and Medical Fitness Unit  
School Resources Group

## COMMENTARY ON DRAFT REGULATIONS

### The Teachers' Superannuation (Additional Voluntary Contributions) (Amendment) Regulations 2008

#### Outward transfers (regulation 11)

1. An amendment will be made to the options available for members of the Teachers' Additional Voluntary Contribution (TAVC) Scheme who transfer their main scheme benefits out of the TPS
2. The TAVC arrangements are available only to members of the TPS. Where a member with a TAVC transfers their main scheme benefits out of the TPS – and as a result has extinguished their membership rights under the TPS - the TAVC fund needs to be transferred at the same time to another investment vehicle. This is what tends to happen in practice, but the AVC regulations do not explicitly set out the options available to the individual. The amending regulations will correct this omission.

#### The Teachers' Pensions Regulations 1997

#### Application of the Earnings Cap (regulation C1(8))

3. We propose to remove the earnings cap (which limits the pensionability of salaries received by those who joined the TPS after 1 June 1989; the current cap is £112,800) from the TPS with effect 1 April 2008. To avoid a windfall pension gain to those whose salaries are currently subject to the cap, it is proposed that their service between 1 June 1989 and 31 March 2008 would be apportioned on the following basis:

$$\frac{(M \times \text{level of earnings cap}) + T}{P}$$

Where –

M = period of capped service between 1 June 1989 & 31 March 2008 (including membership credited by virtue of transferred-in capped service)

P = actual pay

T = aggregate of any transferred-in uncapped service

This approach is consistent with that adopted in the Local Government Pension Scheme

4. Some individuals already have in place agreed remuneration packages with their employers calculated to mitigate the effect of the earnings cap and we believe that it would be appropriate and manageable to provide these individuals with the option of having the earnings cap removed, or of retaining the cap for as long as they remain in post with the current employer; subject to the agreement of that employer.

5. Teachers' Pensions will be contacting those involved in due course setting out their options. It is proposed that a transition period will be introduced to allow individuals to take independent financial advice and discuss their options with their employer. At the end of the transition period if the individual has not elected for the cap to be removed, the default position will be for the earnings cap to continue to apply.

### **Deduction, payment and recovery of contributions (Regulations C3A, C3B and C18)**

6. The proposal is to introduce a common rate of interest for arrears of contributions and payment of back contributions when retrospective TPS membership has been agreed.

7. The teachers' pensions regulations currently include a range of interest rates which differ according to each provision. In addition, there is an imbalance in the arrangements for calculating interest on contributions payable by employers (where interest is payable on arrears of both employee and employer contributions) and the arrangements where it becomes necessary to collect employee contribution arrears direct from a teacher.

8. In the latter case the current regulations provide for interest to be paid from six weeks after the invoice for the arrears has been issued to the teacher. This arrangement fails to protect the scheme from the impact of arrears of contributions that in some cases go back over many years, for example where either the non payment of contributions has not previously come to light or where there have been difficulties in tracing the individual.

9. To achieve a simpler and more equitable approach, it is proposed to introduce a common rate of interest of **3.5% plus RPI** payable in **all** circumstances (this reflects the investment assumptions made in the scheme valuations). As now, interest on the unpaid employee and employer contributions will be compounded with monthly rests from the 8<sup>th</sup> day after they were due to the date of payment. Employee contribution arrears will be collected directly from a teacher if he or she has left pensionable employment when the arrears come to light.

10. The current regulations also provide that once contribution arrears have been identified, the default position if collection of the arrears has not proved possible is to deduct the amount due from retirement benefits. There are administrative complications in managing such debts over what could be a significant number of years. Experience has also shown that there are cases where pursuing arrears is not necessarily the most appropriate way forward.

11. It is proposed that a scheme member would be required to settle arrears of contributions within three years of notification; failure to do so would have the effect of making non-pensionable the period of service in respect of which the contributions are due. Provision will be retained to deduct contribution arrears from retirement benefits where it is appropriate to do so (an example would be where a person would become entitled to retirement benefits within 3 years of being notified of the debt).

12. The regulations will still be framed in such a way that pensionable employment is paramount. Contributions are payable unless the person has made a valid election to opt out (or the employment is not pensionable because it is in continuation of non-pensionable employment that commenced before 1 January 07).

13. Power to disregard a period of pensionable employment on grounds of non-payment of contribution arrears would only be used where it has not proved possible to resolve unpaid contributions within 3 years of the individual being notified of the debt. It will remain the case that the employer is statutorily responsible for the deduction and remittance of employee and employer contribution for every scheme member in pensionable employment.

14. Where the contribution arrears come to light after a person has left employment and Teachers' Pensions are seeking payment of the unpaid contributions directly from the individual, the employer would be liable for payment of the employer contribution arrears regardless of whether the employee pays his contribution arrears.

#### **Entitlement to retain Normal Pension Age on transfer (Regulation EA1)**

15. The proposal is to introduce with retrospective effect from 1 January 2007 a specific provision to reflect the public service pension policy that any individual who has been subject to the transfer of their employment under a Transfer of Undertakings (Protection of Employment) arrangement will retain the normal pension age of their previous scheme on entry to the TPS. This means, for example, that an individual who joins the TPS after 1 January 2007 as a result of a TUPE transfer from an employment where they had a normal pension age of 60 would retain that pension age in the TPS rather than being classed as a "new entrant" who would otherwise have a normal pension age of 65. This provision is restricted to compulsory transfers under TUPE arrangements. It does not extend to those who voluntarily transfer to the TPS.

#### **Entitlement to payment of ill-health retirement benefits (Regulation E4(4)(c))**

16. For the avoidance of doubt and in line with current practice, this regulation is to be changed to make clear that an application for ill-health retirement benefits made within 6 months of leaving pensionable employment could result in either a Partial or Total Incapacity Benefit being awarded.

#### **Retirement lump sums that exceed the permitted maximum (Regulation E6(4))**

17. It is proposed that the regulations are amended to provide that where a scheme sanction charge could be levied by HMRC against the Scheme for an unauthorised lump sum payment, the same inverse commutation rules would apply as those already in place for those over age 75. In other words the "unauthorised" lump sum would be converted into an annual pension payment.

#### **Actuarial Review (Part G and regulation C3)**

18. As part of the considerations with union and employer representatives about the possible removal of the earnings cap, it was agreed that the Government Actuary would be asked to consider as part of the 2008 and future valuations whether there was a case for a higher employee contribution to be paid by "high earners"; and to advise on the salary level at which a higher employee contribution should apply. The Regulations will be amended to allow the conclusions of the Government Actuary's report on this point to be given effect by the introduction of a higher contribution rate for "high earners" from the date of the implementation of the 2008 valuation results.

19. While preliminary work by the Government Actuary does indicate that the profile of high earners is sufficiently different from the majority of TPS members to justify a higher contribution rate, a definitive view can only be taken alongside the detailed work on the scheme valuation. This amendment will provide for a higher contribution rate to be paid by high earners if that is what the valuation report concludes is appropriate.

#### **Elections in respect of additional benefits (Schedule 2A(4))**

20. We propose to provide an additional flexibility that will enable an existing member of the NPA 60 scheme who has reached that age and is still in pensionable employment to purchase additional benefits (by lump sum or instalments) using the costs appropriate for a NPA 65 new entrant. This would not mean that those benefits could not be taken before age 65, but if they are drawn before that age they would be subject to actuarial reduction. At present, it is not possible for a member of the NPA 60 arrangements to buy added pension benefits once they have reached that age. The amount purchased will be restricted to the overall £5000 annual pension limit, less any additional pension benefits already purchased.

#### **Parental leave**

21. This expression is included in the Glossary of Terms in the principal regulations but used in Regulation E20(1)(d) only. It is planned to add the expression to all relevant regulations.