EXPLANATORY MEMORANDUM TO

THE TEACHERS' PENSIONS (AMENDMENT) REGULATIONS 2014

2014 No. 424

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 facilitate the implementation of the new Fair Deal – a non-statutory policy issued by HM Treasury in October 2013. It also provides for the third and final year of increased employee contribution rates, as recommended by Lord Hutton as part of his review into the affordability and sustainability of public sector pension schemes.

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 2010 Regulations. This instrument is being made to amend the 2010 Regulations in order to bring about changes required to meet Government policy.

4.2 This instrument makes amendments to existing arrangements to allow for access to the TPS for a new type of employee. It also amends the employees' contributions rates for the majority of salary bands.

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 Regulations 3 to 7 amend the 2010 Regulations so as to implement new Fair Deal – a non-statutory policy issued by HM Treasury in October 2013. Access to the TPS is expanded to allow a previously excluded type of employee (one who has been out-sourced from the public sector to an independent provider delivering public services) to retain their membership of the scheme. Individual members continue to have access to the TPS while they remain employed on the out-sourced contract, and their access will continue following any subsequent compulsory transfers, so long as it is in respect of that same public service contract.

7.3 At the Spending Review on 20 October 2010 the Government announced increases to employee contribution rates that would lead to savings, across all public sector pension schemes, 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 by 2014-15. 40% of the increase was achieved in the 2012-13 financial year and 80% of the increase was achieved in the 2013-14 financial year.

7.4 Regulation 8 amends Schedule 3 (employees' and employers' contributions) to the 2010 regulations so as to provide for the third and final increase in employee contributions to meet those savings committed to in the 2010 Spending Review.

7.5 The level of employee contributions is calculated by reference to the full-time equivalent annual rate of contributable salary and this instrument retains the tiered structure of pay bands from 2013-14.

8. Consultation outcome

Consultation on new Fair Deal

8.1 The Department ran an eight week public consultation on new Fair Deal and employee ordinary contribution rates from 12 November 2013 to 7 January 2014. In total 47 responses were received, including responses from 7 of the 8 main teacher unions. Of these who responded more than 75% took the opportunity to express on-going opposition to wider reforms of public service pension schemes.

8.2 Where respondents expressed views in respect of the consultation questions, the majority of responses were broadly supportive of the proposals to accommodate the new Fair Deal arrangements into the TPS. The areas of concern that were raised are around the extension of the policy to the Higher and Further Education sector and opinions are polarised on this subject depending upon whether the respondent represented employees or employers. Further to their own consultation, HM Treasury has determined that the Higher and Further Education sector are not covered by new Fair Deal. This decision was not known at the time of the Department's consultation. This instrument does not provide for the application of new Fair Deal in the Higher and Further Education sector.

Consultation on Year 3 employee contribution increases

8.3 Only 15 of the 47 responses received were in relation to Year 3 contributions and several of those respondents chose not to answer some of the specific questions. Of those that responded, the majority made clear their on-going disagreement with the policy. The clear thrust of their responses was that they did not consider that it adequately provided the intended protection for the lower paid while possibly creating disincentives to progressing careers into management roles.

8.4 The Department acknowledges all the points raised. These were considered in depth when setting the contributions rates for the previous two years. The Department has concluded, following consultation, that the approach taken provides the best fit between the need to increase contribution rates and suitably addressing these issues. In designing the proposed tiering structure for 2014-15, the Department felt that it was appropriate to maintain the structure used in 2013-14 to deliver the final 20% of the savings required by Treasury. This will assist members' understanding of the changes and minimise the effect on employers when implementing the structure.

8.5 A full analysis of consultation responses is available on the Department's website at: https://www.education.gov.uk/consultations/

9. Guidance

9.1 To support the introduction of new Fair Deal, a communication strategy has been developed that includes the publication of guidance and a model participation agreement on the scheme administrators website.

9.2 Continuing with the existing structure for increasing member contributions means that further guidance can be limited to the publication and dissemination of the revised contribution rates.

10. Impact

10.1 An impact assessment has not been produced for this instrument as it has no impact on businesses, the public sector or civil society organisations.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This amendment is intended to enable the transfer of public sector teaching work to private sector providers whilst safeguarding the continued participation of

teachers in the Teachers' Pension Scheme while they continue in the same role that they were transferred out on.

12.2 The Department will monitor membership levels to ensure participation levels remain stable.

12.3 The scheme administrator will monitor take up by employers and review administrative processes to ensure these are delivering the intended outcome efficiently, as part of this they will escalate any policy issues to the Department.

13. Contact

Andrew Leach at the Department for Education Tel: 01325 735691 or email: andrew.leach@education.gsi.gov.uk can answer any queries regarding the instrument.