Department for Education

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Pension New Fair Deal and increases to member contribution

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This consultation is seeking views on:

1. The Department's approach to introducing new Fair Deal arrangements into the Teachers' Pensions Scheme (TPS);
2. The arrangements for employee contributions rates for 2014/15 (year 3 contributions);
3. This document also contains information on likely textual changes to the scheme that are required as a consequence of the introduction of the Marriage (Same Sex Couples) Act 2013.

The results of this consultation will be implemented in the Teachers' Pensions Regulations 2010, in April 2014 and carried forward to reform scheme regulations

To	Schools, Colleges, HT/teachers, Trade Unions, OGDs, Employer Associations, Education Faith Associations, Organisation representing Employers, LA/Councils, Universities.
Issued	12 November 2013
Enquiries To	If your enquiry is related to the policy content of the consultation you can contact the Department on 0370 000 2288 e-mail: FairDealAndTechnicalChanges.CONSULTATION@education.gsi.gov.uk

Contact Details

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the Ministerial and Public Communications Division by e-mail: consultation.unit@education.gsi.gov.uk or by telephone: 0370 000 2288 or via the Department's 'Contact Us' page.

1 Policy Issue 1 - Fair Deal

1.1 Background

Fair Deal is a non-statutory policy, issued by Her Majesty's Treasury (HMT), setting out how pensions are to be dealt with when staff are compulsorily transferred from the public sector to independent providers delivering public services.

1.2 Staff Transfers from Central Government: A Fair Deal for Staff Pensions", was published by HMT in June 1999, and introduced Fair Deal. (A further guidance note was issued in June 2004.) The approach taken was that where staff were compulsorily transferred from the public sector, their new employer was to arrange for access to an occupational pension scheme which was broadly comparable with the public service pension scheme they were leaving; this protection extended to subsequent compulsory transfers.

1.3 The Proposal

The Government announced on 4 July 2012 that Fair Deal was to be reformed. The new policy proposal was to extend access to public service pensions. It would apply to staff moved from the public sector to an independent contractor by way of a compulsory transfer (i.e. a transfer to under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). Such staff will continue to be members of the public service pension scheme they were in immediately prior to the transfer, and should remain in that scheme, under the same terms as other members, for both initial and subsequent TUPE transfers.

1.4 The revised Fair Deal policy has been subject to consultation. HMT response to the Fair Deal policy consultation can be found here. Guidance (available here) has been issued by HMT and the Department has considered how to implement the arrangements whilst considering how this can be managed and controlled so as not to expose the scheme to financial risk.

1.5 Implementation

Access to the Teachers' Pensions Scheme (TPS) needs to be expanded to allow a previously excluded type of employer to have access in accordance with the new Fair Deal guidance provided by HMT. This is intended to allow individual members to continue to have access to the TPS while they remain employed on the out-sourced contract, and this access will also continue following any subsequent compulsory transfers(s), so long as it is in respect of that same public service contract.

1.6 There may be exceptional circumstances where there are special reasons for not providing continued access to the TPS for employers and these should be discussed with the scheme administrators and the Department for Education. In such circumstances it would be necessary to comply with the old Fair Deal provisions and provide staff with a broadly comparable scheme.

1.7 In all cases it is proposed that the preference will be for the new employer to provide for transferring staff to retain access to the TPS. If that is not the case, then the previous Fair Deal Guidance will continue to apply, requiring employees to be provided with access to a broadly comparable scheme. If neither of these two options is available, the proposal under the new guidance will be that the outsourcing employer considers whether compensation should be offered to transferring staff – this must be done in consultation with staff or staff representatives. Actuarial advice would need to be taken on the calculation of any compensation in these exceptional circumstances, and bulk transfer terms may also be considered.

1.8 Participation Agreement (Annex A)

The Teachers' Pensions Regulations 2010 (TPR), which govern TPS, will need to be amended to provide for continued access to the scheme for transferring staff. This continued access will also be dependent upon the participating body and the contracting authority signing a Participation Agreement, and fulfilling any obligations under the Participation Agreement and/or the TPS, e.g. providing information on the transferring staff (see below). Once the scheme administrator, on behalf of the Secretary of State, is satisfied that these obligations have been completed, the scheme administrator will confirm access to the scheme. The amendments to the TPR will require that this process will be completed before the proposed transfer date of the staff, although it proposed that the regulations will be amended to provide that the Secretary of State may extend that deadline.

1.9 The Participation Agreement will be provided by the Secretary of State and will set out the obligations of the provider and the contracting authority, in addition to those which are required under the regulations by virtue of the provider being admitted as an employer. A model Participation Agreement for employers to use when outsourcing services is attached at Annex A. This model Participation Agreement will be maintained and updated, and will be published on the Teachers Pensions' website.

1.10 It is proposed that the TPR will be amended to require that contractors should auto-enrol into the TPS all eligible staff, including those that have previously opted out of the TPS, on the first day of the new contract. This will establish entitlement to participate in the scheme, and individuals are at liberty to opt out again after this. From this point onwards the over-riding legislation in respect of automatic enrolment will come into effect as it does for all other members to the scheme.

1.11 The Participation Agreement will require the outsourcing employer must provide the scheme administrators with the details of individuals transferring to the new employer who will retain eligibility for membership of the TPS.

1.12 Requirement for a bond, guarantee or Indemnity

Contractors will be expected to comply with the Participation Agreement. However, It is proposed to amend the regulations so that where an employer has failed to fulfil its obligations, or where there are concerns that an employer may not fulfil their obligations, the Department may require the employer to support their application with a bond, guarantee or indemnity, which will provide financial reassurance to the scheme, especially in respect of member and employer contributions.

Policy 1 - Consultation questions

Question 1: Do you agree with the Department's proposed method for legislating to accommodate the new Fair Deal Guidance?

Question 2: Do you agree that the proposed wording of the Participation Agreement will help to ensure that new employers in the TPS will fulfill their obligations?

Question 3: Do you agree that the proposal to allow the Department to require a bond, indemnity or guarantee is a proportionate and effective mechanism for protecting existing scheme members and employers?

Question 4: Do you consider that there are equality issues that will result in any protected groups being disproportionately affected by the implementation of New Fair Deal into the TPS? If so, what do you consider to be the disproportionate effect?

2 Policy Issue 2 Increase to member contribution rates

2.1 Background

Providing good quality pensions is becoming more challenging given increasing life expectancy. That is why the Government set up the Independent Public Service Pensions Commission (IPSPC) chaired by Lord Hutton to make recommendations on how such pensions can be made sustainable and affordable, whilst remaining fair to the workforce and the tax payer.

2.2 The IPSPC, as part of its review, was invited to produce an interim report by the end of September 2010. The terms of reference stated; “This should consider the case for delivering savings on public service pensions within the spending review period - consistent with the Government’s commitment to protect those on low incomes - to contribute towards the reduction of the structural deficit.”

2.3 In his interim report of 7 October 2010, Lord Hutton recommended that increased longevity and the imbalance between employer and employee contributions are strong reasons to make short-term changes to pension contributions pending a more fundamental redesign of the schemes.

2.4 On 19 July 2011 the Chief Secretary to the Treasury (CST) set out the principles that would apply to increases in contributions for members of unfunded public service pension schemes, including the Teachers' Pension Scheme (TPS). The total overall savings are £2.8 billion per annum across the public service pension schemes by 2014-15. These changes equate to an average 3.2 percentage point contribution increase for members of public service pension schemes. These savings were to be introduced incrementally over the three years starting April 2012, on a 40%:80%:100% basis.

2.5 The proposed contribution increases reflect the principles set out by Government and are designed so that those earning the most pay the highest percentage point increase. The proposals also protect the lowest earners and are designed to encourage maximum participation within the scheme.

2.6 The Proposal

In July 2011 the Department consulted on proposed changes to contribution rates for members of the Teachers' Pension Scheme (TPS). Following the consideration of responses to that consultation, tiered contributions were introduced into the TPS from April 2012.

2.7 In developing the tiered structure the Department worked closely with other public service schemes and HM Treasury to ensure that the design of contribution increases reflects the circumstances of the TPS membership, and considered the impact on different areas of the membership. The contribution increases reflected the principles set out by Government and were designed so that those earning the most pay the highest percentage point increase. The tiers also protect the lowest earners and are designed to encourage maximum participation within the scheme.

2.8 On 26 October 2012, the Department launched a further consultation on proposed member contribution rates. Following discussion with Trade Unions and employer representatives, this second phase of tiered contribution introduced an additional tier. The introduction of an 8^{th} tier was to provide additional protection middle earners and ensure a fair distribution of costs.

2.9 Implementation

The proposed contribution rates for 2014-15, on which the Department is consulting, are as follows;

Pensionable annual earnings in relevant year (£)		**Contribution Rate in 2014-15***	**Increase (against 2013-14)**
Lower	**Upper**	**Tier%**	**Tier%**
Below	£14,999	6.4%	0.0%
£15,000	£25,999	7.2%	0.2%
£26,000	£31,999	8.3%	0.4%
£32,000	£39,999	9.5%	0.7%
£40,000	£44,999	9.9%	0.7%
£45,000	£74,999	11.0%	0.9%
£75,000	£99,999	11.6%	1.0%
£100,000		12.4%	1.2%

2.10 The Department has worked closely with member representatives to develop a member contribution structure for 2014-15, which will continue to meet the Government's commitment to protecting the lower paid.

2.11 In developing this structure the Department has paid particular attention to concerns from stakeholders that increases in member contribution rates may result in a higher level of opt-outs. The Department has, since April 2012, been monitoring the level of opt-outs from the TPS. Analysis of opt-out rates has shown no evidence to suggest an increase in member opt-out as a result of contribution increases.

2.12 The Department's proposal, as set out in the table above, is to roll forward the contributions structure as implemented in April 2013, with increases in the contribution rates to secure the final year of savings.

2.13 This structure will result in an average contribution increase of 0.6 percentage points on the rates implemented in 2013.

2.14 A member earning £35,000 in 2014-15 would therefore see a reduction in annual take home pay of £174 while a member earning £50,000 in the same period would see a reduction of £276.

Policy 2 - Consultation questions

Question 5: Do you agree that the Department's proposed structure will satisfy the government's commitment for the protection of the low paid and the maximum increase for higher earners.

Question 6: Are there any consequences of the proposed contribution tiers that you consider have not been addressed?

In developing the proposed member contribution tier structure, the Department has had due regard to our equality responsibilities as set out in the Equalities Act 2010.

Question 7: Do you consider that there are equality issues that will result in any protected groups being disproportionately affected by the proposed contribution structure? If so, what do you consider to be the disproportionate effect?

3 Policy Issue 3 - Marriage (Same Sex Couples) Act 2013

3.1 The Department is not consulting on changes to the regulations in respect of The Marriage (Same Sex Couples) Act 2013, but is using this consultation as an opportunity to set out how proposed changes to the scheme regulations will be made as a consequence to the Act.

3.2 The Act received Royal Assent on 17 July 2013 and its main purpose is to enable same sex couples to marry.

3.3 It is proposed that secondary legislation, to be made by the Department for Culture, Media and Sport (DCMS), within which the Government Equalities Office sits, will amongst others thing, insert textual amendments to the Teachers' Pensions Regulations to retain the current policy that public sector pension schemes treat same sex married couples as civil partners, and not as opposite-sex married couples. The provision will also govern the treatment of co-habiting couples.

4 Annex A -Draft Participation Agreement

4.1 Please click here to download Annex A, the Participation Agreement.

5 How To Respond

5.1 This consultation will run from 12 November 2013 until 7 January 2014.

You can respond to the consultation by completing the response form and emailing it to:
FairDealAndTechnicalChanges.CONSULTATION@education.gsi.gov.uk

or by sending your response by post to:
Teachers' Pension Consultation
Teachers' Pensions and De-regulation Division
Department for Education
Mowden Hall
Staindrop Road
DARLINGTON
DL3 9BG

6 Additional Copies

6.1 Additional copies are available electronically and can be downloaded from the Department for Education's e-consultation website at:
www.education.gov.uk/consultations

7 Plans for making results public

7.1 The results of the consultation and the Department's response will be published on the Department's e-consultation website early in 2014.