

**2012 No. 2270**

**EDUCATION, ENGLAND AND WALES**

**The Teachers' Pensions (Amendment) (No. 2) Regulations 2012**

*Made* - - - - *3rd September 2012*

*Laid before Parliament* *7th September 2012*

*Coming into force* - - *1st October 2012*

The Secretary of State for Education makes these Regulations in exercise of the powers conferred by sections 9 and 12 of, and Schedule 3 to, the Superannuation Act 1972(a).

The Secretary of State has consulted with the persons referred to in section 9(5) of that Act.

In accordance with section 9(1) of that Act, these Regulations are made with the consent of the Treasury(b).

**Citation and commencement**

1. These Regulations may be cited as the Teachers' Pensions (Amendment) (No. 2) Regulations 2012 and come into force on 1st October 2012.

**Amendments to the Teachers' Pensions Regulations 2010**

2. The Teachers' Pensions Regulations 2010(c) are amended in accordance with regulations 3 to 9.

3. In regulation 6 (pensionable employment: general)—

(a) after paragraph (1), insert—

“(1A) In this regulation—

(a) paragraphs (2) and (3) apply to a person's employment before the automatic enrolment date in relation to that person in respect of that employment; and

(b) paragraphs (2A) and (3A) apply to a person's employment on or after the automatic enrolment date in relation to that person in respect of that employment.”;

(b) after paragraph (2) insert—

“(2A) A person's employment in a capacity mentioned in Part 2 of Schedule 2 is pensionable employment if either—

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(a) 1972 c. 11. Section 9 was amended by sections 4, 8 and 11 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7); paragraph 7 of Schedule 8 to the Pension Schemes Act 1993 (c. 48); article 107 of S.I. 2001/3649; and article 5 of, and paragraph 27 of Part 2 of Schedule 2 to, S.I. 2010/1158. Section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990.

(b) S.I. 1981/1670.

(c) S.I. 2010/990.

- (a) an election made under regulation 10 (election for employment to be pensionable) has effect before the automatic enrolment date; or
  - (b) the employer enrolls the person into the Scheme in relation to that employment, and no election under regulation 9 (election for employment not to be pensionable) has effect.”;
  - (c) after paragraph (3) insert—
    - “(3A) A person’s employment in a capacity mentioned in Part 3 of Schedule 2 is pensionable employment if either—
      - (a) an election made under regulation 10 (election for employment to be pensionable) has effect before the automatic enrolment date; or
      - (b) the employer enrolls the person into the Scheme in relation to that employment, and no election under regulation 9 (election for employment not to be pensionable) has effect.”.
- 4.** In regulation 7 (employment not pensionable: general)—
- (a) in paragraph (1)(a), for “18” substitute “16”;
  - (b) for paragraph (3), substitute—
    - “The employment of a person who makes an election under regulation 9 (election for employment not to be pensionable) in respect of that employment is not pensionable while the election has effect.”;
  - (c) in paragraphs (7) and (9), after “pensionable employment”, insert “or the person’s employer makes arrangements under section 3(2)(automatic enrolment) or 5(2)(automatic re-enrolment) PA 2008 in respect of that employment.”.
- 5.** In regulation 8 (employment not pensionable: contributions not paid), in paragraph (2), after “Any period of” insert “the”.
- 6.** In regulation 9 (election for employment not to be pensionable)—
- (a) for paragraph (1), substitute—
    - “A person may make an election under this regulation in respect of a particular pensionable employment by giving written notice to the employer.”;
  - (b) for paragraph (3), substitute—
    - “But—
      - (a) if the notice is given within 3 months after the start of employment in a capacity mentioned in Schedule 2, the election has effect from the first day of that employment; and
      - (b) if the notice is given within 3 months after the date on which arrangements made by the employer under section 3(2) (automatic enrolment) or section 5(2) (automatic re-enrolment) of PA 2008 have effect in respect of that employment, the election has effect from that date.”;
  - (c) for paragraph (4), substitute—
    - “An election ceases to have effect from the earlier of—
      - (a) the date on which an election under regulation 10 (election for employment to be pensionable) has effect; and
      - (b) the date on which arrangements made by the employer under section 3(2) (automatic enrolment) or section 5(2) (automatic re-enrolment) of PA 2008 have effect in respect of the employment.”.
- 7.** In regulation 10(1) (election for employment to be pensionable)—
- (a) after “under this regulation” insert “in respect of a particular employment” ; and

- (b) after “Secretary of State” insert “save that a person mentioned in paragraph (2)(b), (2)(c) or (2)(d) may only make an election before the automatic enrolment date in relation to that person in respect of that employment.”.

8. In regulation 11 (backdating elections for employment to be pensionable)—

- (a) in paragraph (1)(a), after “by a person in” insert “respect of an”;
- (b) in paragraph (2), after “by a person in” insert “respect of an”;
- (c) for paragraph (7)(b)(i), substitute—  
“any period of any of the person’s opted-out employments, or”.

9. In Schedule 1 (Glossary of expressions)—

- (a) below “PA 1995” in the “Expression” column, insert “PA 2008”, and below “the Pensions Act 1995” in the “Meaning” column, insert “the Pensions Act 2008(a)”;
- (b) below “appropriate factor” in the “Expression” column, insert “automatic enrolment date”, and below “see regulation 130 (appropriate factor)” in the “Meaning” column, insert “the meaning in section 3(7) PA 2008.”;
- (c) below “retirement pension” in the “Expression” column, insert “Scheme”, and below “a pension payable under regulation 60 (retirement benefits)” in the “Meaning” column, insert “scheme for the provision of pensions to teachers in England and Wales established under section 9 of SA 1972”.

3rd September 2012

*Nick Gibb*  
Minister of State  
Department for Education

We consent

*Brooks Newmark*  
*James Dudderidge*

3rd September 2012

Two of the Lords Commissioners of Her Majesty’s Treasury

### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which come into force on 1<sup>st</sup> October 2012, make amendments to the Teachers’ Pensions Regulations 2010.

The amendments make changes to the arrangements for members to opt into and out of the Teachers’ Pension Scheme (“the Scheme”). This is to assist employers with employees in, or eligible to join, the Scheme in complying with certain of the requirements set out in the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010. Those Regulations prescribe arrangements, provided for by Chapter 1 of Part 1 of the Pensions Act 2008 (“the Act”), for employers to enrol jobholders who are not active members of a pension scheme into a compliant scheme with effect from the automatic enrolment date, to process opt-out notices where these are received, and to re-enrol those who opt out at three-yearly intervals.

There is an extended phasing-in of the employers’ duties under the Act. Some of the amendments to the Teachers’ Pensions Regulations 2010 apply only when the automatic enrolment date has been reached (regulations 3, 4 and 7). Thereafter, an employment which falls into Parts 2 or 3 of Schedule 2 is no longer pensionable on election, although an existing election remains effective

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(a) 2008. c. 30.

(regulation 3). The employer is under a duty to enrol jobholders who are not members of any scheme into an eligible scheme without requiring any election by the jobholder.

Other changes take immediate effect when these Regulations come into force. These include the reduction of the minimum age for membership of the Scheme from 18 to 16 (regulation 4) and the power for a member to opt into and out of the Scheme in respect of individual employment contracts (regulations 6, 7 and 8).

Definitions of the Pensions Act 2008, “automatic enrolment date” and “the Scheme” are added to the Glossary in Schedule 1 (regulation 9).

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

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