

**Response by the Irish National Teachers' Organisation,  
(INTO)**

**to**

**Consultation on draft Teachers' (Compensation for  
Redundancy and Premature Retirement) Regulations  
(NI) 2009 and complementing amendments to the  
Teachers' Superannuation Regulations (NI) 1998**

**May 2009**

***Respondents Details***

Name.....	
Address.....	
Town/City.....	
Postcode.....	

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Please explain why you want your response to be kept confidential:

Name

Organisation (if applicable)

Address:

Please mark the box that best describes you as a respondent

☐ Employing  
Authority

☐ School  
Governor

☐ School Principal/Vice  
Principal

☐ Classroom  
Teacher

☐ Director of FE  
College

☐ Member of Governing  
Body of FE College

☐ Lecturer in FE  
College

☐ Trade Union

☐ Other - Please Specify

1 Are you content that there is a need for the Department to make these regulations? If not, please give reasons.

☐ Yes

☐ No

☐ Not sure

INTO cannot concur with the need for these draft regulations and the proposed timeframe for their introduction. We note in particular the manner in which these draft regulations were formulated and the unilateral decision of the Department of Education to remove the interim arrangements without any consultation or debate.

INTO have extremely serious concerns about these proposals. We view that their impact will reach further than those who are primarily affected by the regulations. INTO are currently managing an unprecedented increase in the numbers of compulsory redundancies in schools and colleges. Many of these individuals selected for compulsory are young female teachers who have only secured their first permanent teaching position in schools. INTO is therefore concerned that the timing and manner of introduction of these arrangements and the long term effect they will ultimately have as the intake Teacher Training Colleges reduces and fewer teaching positions become available for young graduates who hope to enter the profession. In effect it is the strategic opinion of INTO that the entire education system and the staff therein will be damaged for at least the next 10 years until these regulations have been bedded down.

A combination of generous levels of enhancement and an increase in recent years in the number of premature retirements means that a significant increase in employers' contributions would be needed if the cost of premature retirement were to remain a burden on the Scheme. That would add upwards of £70m a year to public expenditure, and divert resources away from the classroom.

The rationale for the above regulations is set out in paragraph 2.4 above. INTO cannot accept the rationale and we find inappropriate the use of the words "generous levels of enhancement." We view that the levels of enhancement for teachers were collectively agreed with the recognised teaching unions. These levels of enhancement were and remain on a par with other areas of the public sector in Northern Ireland. We note that such levels of enhancement still continue to be enjoyed in areas of the public sector and have relied on significantly to promote the Review of Public Administration (RPA). It is therefore questionable why such draconian proposals are to be introduced at a time when the Department has signalled a significant programme of school closures and rationalisation, reform of the curriculum and the implementation of the Education and Skills Authority. At such times the need to invest in and support the teaching workforce must be of the utmost importance. INTO cannot concur that such proposals as laid out in the draft regulations are likely to achieve this objective.

Para 2.6 and 2.7 refers to a realignment of funding in respect of premature retirement.

Action was taken some years ago in the comparable schemes in Scotland and in England and Wales to ensure that employers became accountable for the cost of decisions to grant premature retirement. Employers were thus encouraged to make considered, prudent decisions.

The Department of Education is now proposing to make regulations to provide that in future employers will pay for the extra cost of each premature retirement as and when it takes place. The draft regulations will have the effect of transferring to teachers' employers all the costs associated with compensation for premature retirement, including the early payment of unreduced pension benefits.

We note that the real emphasis of these proposals is to shift the cost from the Department of Education to the employer without a specific definition of who the employer. We also note that the draft proposals have no details on the funding mechanism and whether such funding would be encompassed within the Common Funding Formula or would be devolved to ESA or held centrally by De but subject to annual bids in the quarterly spending rounds. Without such clarity we believe that there will be a significant inequality in treatment of teachers in how they will be managed in terms of a redundancy, closure and amalgamation with the financially able schools able to offer enhanced severance packages compared to those teachers who are forced to close because of falling enrolments, particularly small rural primary schools.

In essence what is now being proposed is that teachers will continue to make payments to their pension scheme to the Teachers Pension Branch. The "employer" will however become liable for the costs of premature retirements (para 2.7). However the Department will retain the monies accrued from the pension contributions (both employers and employees' contributions) while requiring "employers" to manage staff redundancies other in the full knowledge that they are totally liable for the full costs of making such teachers redundant. Imposing financial liability on individual schools without an agreed mechanism of funding such change is not an acceptable position for INTO and one which calls the manner in which these proposals have been developed into serious doubt and concern.

The new regulations will also provide employers with discretion to make enhanced severance payments up to a maximum of 104 weeks pay with no upper age limit as an alternative to granting Premature Retirement Compensation. The circumstances under which payments may be made and the level of such payments will be a matter of policy on the part of the employer.

The above paragraph 2.8 sets out the thrust of the new regulations. We note with concern the use of the words "up to a maximum" with no clear definition of a minimum level of benefit. In addition, all payments are "discretionary" and are to be made in accordance with the policy of the employer. In commenting on this paragraph and the proposals in general INTO would state, that there presently is no policy as referred to in the draft regulations and no indication has even been given by the Management Side of the Teachers Negotiating committee to develop such a policy. INTO cannot accept a situation where everyone does their own thing and the Department adopts a "not our problem " approach. Secondly we again note the discretion of employers and the significant potential this has to lead to poor and discriminatory practice and certain schools or groups being more favourably treated.

Commenting specifically on the proposals as outlined

## **Draft Teachers (Compensation for Redundancy and Premature Retirement) Regulations**

Part 2 retains the existing provisions regarding discretionary compensation for redundancy.

With respect to Part 2 this section gives discretion to employers to enhance the premature retirement arrangements. The reality however is that with no funding mechanism to allow this discretionary practice to continue unless the school has alternative sources available such as trusts, endowments or contributions from benefactor etc the system is at best flawed and at worst discriminatory and a potential breach of NI equality law and the Equal Pay legislation. It is the view of INTO that there should be an agreed level of compensation that is not discretionary on the financial assets of the employer and that such arrangements should be commensurate with the levels of compensation applicable in other areas of the Northern Ireland public sector and should be reflective of the status and commitment of individuals who have in most occasions given the majority of their working life to the education of children.

We also note that in this Section 2 – Interpretation and as stated elsewhere in this response in the list of definitions provided from 2(a) onwards there is no definition of “employer”. This is crucial given the current legal definition of an employer. Furthermore any such amendment to the regulations without agreement with the recognised teacher unions is open to a significant number of legal challenges. It therefore requires consultation, clarification and agreement with INTO and the recognised teacher unions on this important point.

Part 3 adds new provision regarding discretionary compensation for termination of employment. The maximum compensation which can be paid is 104 weeks’ pay, less any redundancy payments to which the person is entitled and any compensation for redundancy paid under Part 2 of the regulations.

In respect of part 3 we note that the regulations set out a maximum level of compensation while clearly omitting the level of minimum being paid. This is unacceptable to INTO. We believe that this will lead to a gradual erosion of any premature compensation arrangements. We therefore would seek a clear statement of the minimum payment available which should be at least 66 weeks’ salary.

We note in particular the use of the word “may” and the fact that the regulations are written in such a way as to avoid setting any minimum level of compensation. It is extremely disappointing that the Department of Education has not chosen to exercise its status of the member to the Teachers Negotiating Committee to set out

these draft proposals before engaging the parliamentary draughtsmen. It is the understanding of INTO that there is agreement on the minimum level of compensation payable in England and Wales and this is presently set at 66 weeks. We also note again that Section 3 is devoid of any information of funding mechanisms.

Part 4 adds new provision regarding mandatory compensation for premature retirement. Such mandatory compensation is the counterpart to provisions in the Teachers' Pensions (Amendment) Regulations (NI) 2009 which provide for the actuarial reduction of the retirement lump sum and the annual rate of the

retirement pension in cases of premature retirement on or after 1st June 2009. The amount by which they are reduced is paid as lump sum compensation and annual compensation under regulation 7. The remainder of Part 4 makes consequential provision regarding abatement of the annual compensation under regulation 7 during further employment (regulation 8), payment of supplementary death grant (regulation 9) and short-term family benefits (regulation 10).

In commenting on this part of the proposals we wish to comment as follows. It is accepted that teachers who wish to retire early may avail of their pension earlier than planned and as a result accept an actuarial reduction in the payment of such pension. INTO however are of the view that when the individual is made redundant by virtue of redundancy, closure or amalgamation or funding or curricular matters then the actuarial reduction should not be applied. In addition we have serious concerns that the actuarial reduction is also being effected on the tax free lump sum thus effecting further significant savings for the Department while imposing further financial pressure on teachers who have contributed to their pension scheme for in many cases in excess of 30 years. INTO cannot concur with actuarial reductions being imposed on teachers whose reasons for the ending of their employment has been outside their control.

We also draw concern that the proposals as set out also impose financial penalties if surviving relatives who may as a result of these regulations find that their projected income is significantly reduced by the application of an actuarial reduction. INTO have previously accepted that an individual teacher who retires of their own choice may avail of an actuarial reduced pension. We cannot accept a situation where at a time of loss of employment and significantly reduced income further penalties should be imposed not only on teachers' pensions but on their surviving dependents by the implementation of these regulations.

Parts 5 and 6 retain the provisions formerly in Parts III and IV of the 1991 Regulations regarding discretionary compensation for premature retirement (the so-called additional service credit).

In responding to this part of the draft regulations we again draw the comment that these payments will be based on "discretionary" payments and an actuarial reductions where the retirement has occurred before the agreed retirement age. INTO cannot conclude that these proposals as formulated as a proper way to treat the surviving relatives of a teacher in the event of their death.

Part 7 contains miscellaneous and supplemental provision regarding compensation under Parts 4 and 5. In addition provision is made regarding mandatory compensation for admitted service as a counterpart to the actuarial reduction of admitted service benefits based on premature retirement under provisions in the Teachers' Pensions (Amendment) Regulations (NI) 2009.

Given what has been previously stated INTO cannot regrettably agree with the provisions of this section given that the overall effect of the regulations is to significantly reduce the monies paid to teachers at a time of loss of employment as a teacher.

## **Amendment of Superannuation Regulations**

Regulation 4 substitutes a new regulation E4(7) which sets out the requirements for entitlement to benefits for those who are retired prematurely by their employer.

INTO have already set out our position that the decision to impose further long term financial penalties at a time of loss of employment is unacceptable. We also restate that these draft regulations will have a significant detrimental effect at a time when there is major organisational change planned in education. The introduction of such proposals is likely to lead to an older less motivated workforce and will seriously impact on the progress of educational change for at least a generation.

Regulations 5 and 6 provide for the actuarial reduction of the retirement pension and retirement lump sum payable in respect of those who are retired prematurely by their employer. The Teachers (Compensation for Redundancy and Premature Retirement) Regulations (NI) 2009 make provision for the payment of the balance. Regulations 7, 8 and 9 make consequential provisions.

INTO again restate that the imposition actuarial reductions at a time of job loss is unacceptable and that the extension of the actuarial reduction to the lump sum is a further derogation of the benefits of serving teachers who have faithfully contributed to their pension scheme.

Regulation 10 makes a change to Regulation G2(5), to provide for the manner in which notional investment income is to be determined.

We note with some concern this proposal as the notional value of the fund is determined solely by the Government actuary. It is the view of INTO that pensions are a full part of the teachers terms and conditions and should be subject of open and transparent scrutiny by the recognised negotiating body rather than as set out in the draft regulations. We also note that there has been no information on the

current state of the notional fund to assess the overall impact of the projected change.

Regulation 11 amends Schedule 1 to insert a definition of “compensating authority”.

We refer to previous comments and the scant lack of information on an agreed funding mechanism and therefore cannot agree to the suggested change.

### **Equality Impact**

The Department has screened the draft regulations and concluded that, in the absence of evidence of a differential adverse impact on any of the Section 75 groups, a full Equality Impact Assessment is not necessary. A copy of the screening is attached as Appendix C.

We note this section of the consultation proposals with serious concern and INTO will set out reasons for these concerns.

Section 75 and Schedule 9 to the Northern Ireland Act 1998 came into force on the 01 January 2000 and placed a statutory obligation on public authorities in carrying out their various functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity –

- between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- between men and women generally;
- between persons with a disability and persons without; and
- between persons with dependants and persons without

The Department of Education is designated as one of these statutory bodies. The draft proposals were published on 19<sup>th</sup> March 2009 with a concluding date of 15<sup>th</sup> May 2009. The Department of Education states on its website. “ ***Equality is a mainstream responsibility for the Department of Education.***”

***With regard to the document Appendix C INTO would comment as follows:***

#### **1.3 Main stakeholders affected**

The main stakeholders affected are members of the teachers’ pension scheme, their employers, and their representatives.

It is the view of INTO that the stakeholders affected must of right, given the nature and scope of the regulations includes those who are dependants of members of the teachers’ superannuation scheme. It is wrong to view the word affected” as only

applicable who may wish to respond to the draft regulations because they are members of the scheme.

## **SCREENING THE POLICY / DECISION**

### **GENDER**

The policy will affect teachers/lecturers of all genders. At August 2008 the age breakdown of those over 50 shows that 62.33% were female and 37.67% male. The figures for premature retirement (2007/08 financial year) show uptake of premature retirement to be 61.3% female and 38.7% male.

It is the view that the screening pool is incorrect. As the policy has an impact on all members of the Teachers Superannuation Scheme the gender profile must reflect that figure. We therefore assert that the figure should be 78% female 22% male and the conclusion must therefore be that the policy will have a significant impact in terms of gender.

### **AGE**

As this policy is concerned with premature retirement there may be an age related impact.

INTO would concur that there is an age related impact. We however believe that the age range is greater than that ascribed by the Department being from 40 to 59 years rather than 50 -59 years. We also note that a consequence of the policy is that there are more compulsory redundancies within younger staff that because of the gender profile of teaching are likely to be female. INTO is therefore of the view that the policy has a significant impact on the basis of age.

### **Dependent Status**

There is no evidence that this policy will unduly impact on members of this group.

INTO cannot concur with assessment. We believe that because of the range and scope of the arrangements published that the regulations will impact on dependants of teachers who are members of the scheme as their benefits are reduced actuarially. INTO therefore assert that the regulations will impact detrimentally on the basis of dependent status.

**2.2 Is there any indication or evidence of higher or lower participation or uptake by different groups?**

### **GENDER**

There is a slightly higher take-up by male teachers when compared with the eligible field. Any impact is likely to be negligible.

INTO is uncertain as to how the Department have formulated this opinion as the regulations have never been applied within the Northern Ireland context. We cannot therefore concur with the assertion as empirical data on which it has been made is not supplied with consultation

## AGE

As the cost of premature retirement will no longer be borne by the Teachers' Pension Scheme, there is likely to be a sharp downturn in compensation offered by employing authorities and consequently in the number of volunteers for redundancy. (This pattern was observed when hard charging for the total costs of premature retirement was introduced in Great Britain over 10 years ago.) If in future employers are unable to identify sufficient volunteers for redundancy, there may be an increase in the number of compulsory redundancies. The age profile of redundant teachers may therefore become more mixed – or predominantly in the younger age range - rather than almost exclusively older (50+) teachers as at present.

However, evidence that the Government has gathered<sup>1</sup> demonstrates that younger workers tend not to be out of work for long and see only a small fall in pay when switching jobs. In contrast, older workers are much more likely to become long-term unemployed and to experience a substantial fall in pay when finding a new job.

Enhanced severance payments would also be available to teachers who are not eligible by reason of their age for immediate payment of pension.

As in Great Britain, the onus will remain on employing authorities to satisfy themselves that they can objectively justify any difference in compensation payments to individuals of different ages or sex whose employment is being terminated early.

INTO concur that these regulations will force more compulsory redundancies and this has already been evidenced by INTO through a significant increase in compulsory redundancies borne mainly by young female teachers many of whom had only secured their first permanent teaching appointment.

INTO are amazed at subsequent statements made in this section. We are unaware of the source of the information upon which the Department is relying in its assertion that young workers are not out of work for long. The Department is fully aware of the numbers of young graduate teachers who remain unemployed 3 to 4 years after qualification. INTO therefore believe that the inclusion of this comment is mischievous and is designed to mislead. We do not agree with the assertion. We also must state that employment patterns for teachers in England and Wales demonstrate greater mobility patterns which do not exist within teaching in Northern Ireland.

### **2.3 Is there any indication or evidence that different groups have different needs, experiences, issues and priorities in relation to the policy/decision?**

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#### **GENDER**

There is no evidence that this group has different needs, experiences, issues and priorities in relation to the policy.

As females tend to be the primary carers of families INTO believe that must be reflected in the screening..

#### **AGE**

There is no evidence that this group has different needs, experiences, issues and priorities in relation to the policy.

As the policy impacts on both young and older teachers we believe that the policy must reflect the need of these groups.

#### **Dependent Status**

There is no evidence that this group has different needs, experiences, issues and priorities in relation to the policy.

INTO would state that members of the superannuation scheme will have different needs, experiences, issues and priorities in relation to this policy due to the nature and scope of the proposed changes.

## **2.4 Is it likely that the policy/decision will meet those needs?**

INTO believe that the policy changes will have a detrimental impact on members of the scheme.

## **2.5 Other statistical information**

INTO note that the only information relied upon by the Department of Education in developing these proposals was data applicable to the current scheme. We do not concur that this information is directly transferable to the current regulations. We also note that sweeping assertions about employment prospects of teachers have been referred to in this consultation yet these have not been based on any empirical or statistical evidence which was not made available as part of this consultation.

## **(3) SHOULD THE POLICY/DECISION BE SUBJECT TO EQUALITY IMPACT ASSESSMENT?**

INTO cannot concur that this policy should not be the subject of an Equality Impact Assessment. We have identified in this response significant impact on the basis of

- Gender
- Age
- Dependent Status

INTO view that his screening has been significantly flawed and that the decision not to impact asses is wrong and must be corrected and reflected in the draft regulations before being presented to the NI Assembly.

On a further point INTO are extremely concerned that these regulations were the subject of screening for a period of 8 to 12 weeks ending on 28/1/09 and this decision was approved by the Department on 29/1/09. We are unable to understand how this occurred when the policy was not published for consultation until 19/3/09. Prior to engaging in this consultation INTO has written to the Department asking for details of this screening, the mechanism employed , the number of responses and where the screening data can be views. To date we have not received a response to our request for this information.

The Department of Education in its Equality Scheme states "*The Department recognises the importance of proper consultation and in carrying out its equality duties will endeavour to conduct consultations with groups and individuals in a timely, open and inclusive manner, and in accordance with the Guiding Principles on consultation as laid down by the Equality Commission's Guidelines .*

INTO do not believe that the Department has honoured this provision of its equality scheme. We are therefore of the view that the Section 75 screening was not in keeping with the Departments Equality Scheme or the spirit and letter of Section 75 of the Northern Ireland Act 1998.

## **Conclusion**

INTO cannot concur with these regulations and the timeframe for their introduction. We note in particular the manner in which these draft regulations were formulated and the unilateral decision of the Department of Education to remove the interim arrangements without any consultation or debate.

Overall INTO have extremely serious concerns about these proposals. We view that their impact will reach further than those who are primarily affected by the regulations. We currently are seeing significant numbers of compulsory redundancies in schools and colleges. Many of these individuals are young female teachers who have only secured their first permanent teaching position in schools. INTO is concerned that the timing and manner of introduction of these arrangements will ultimately impact into the intake Teacher Training colleges as fewer and fewer teaching positions become available for young graduates who had hoped to enter the profession. In effect the entire education system and the staff therein will be damaged for at least the next 10 years until these regulations have been bedded down.

## 2 Have you any other comments on any other aspects of the regulations?

The need for this legislative change has been set out in the introductory paragraphs of the consultation document. There is reference to the need for parity with the similar schemes in England, Wales and Scotland. There is also reference to the comments of the Northern Ireland Public Accounts Committee.

It is important that these matters are addressed. With regard to the changes to pension regulations in England, Scotland and Wales these were the subject of consultation with the recognised teaching unions **before** the legislative changes were introduced. The mechanism for this consultation was the agreed collective bargaining machinery. In relation to the development of this draft legislation the actions of the Department of Education were to announce the ending of the interim arrangement and the determination to produce draft legislation with the aim of having it implemented by the 1<sup>st</sup> June 2009. There were no attempts to engage in meaningful consultation or to use the agreed negotiating machinery to progress proposals before engaging the parliamentary draughtsman. In fact the latter is now apparent in that the Department was able to screen the draft legislation at least eight weeks before it was even announced to the recognised teacher unions.

With regard to the Public Accounts Committee (PRC) it is true that this body has been critical of the reemployment of teachers who had been prematurely retired. The committee however have not commented on the pensions of serving teachers or made any recommendations to reduce such pensions in times of school closures, amalgamations or financial redundancies. The Department of Education had the power to prevent the reemployment of prematurely retired teachers in existing legislation but choose not to exercise this. INTO therefore cannot accept the argument that the driver for this legislation is not the Department of Education, rather it is the PAC.

There is a way forward. INTO would suggest that the parties agree to use the recognised negotiating arrangements and to engage in a fully open and transparent process to allow for a transition to new pension arrangements which would pertain in the event of redundancy, closure or amalgamation. In the interim the present arrangements should be permitted to continue for a period of three to five years which legislative change is planned and worked through.

To move with the haste now being exercised by the Department of Education will destroy the teaching profession for at least a generation. Teachers lives will be turned upside down as they are denied their pensions, forced to accept actuarially pensions and lump sums because their school has closed and they are powerless to stop it. Young teachers will continue to be the victims of compulsory redundant and ultimately the effects of this proposed pension change will work into the teacher training colleges and the classrooms as pupils make career choices which may have included becoming a teacher.

INTO are also concerned that the timing of these proposals; considering the timing to be inappropriate given that education is in the beginning of major structural and academic reforms. Without appropriate severance arrangements many of the other changes highlighted by the Minister for Education will be delayed, deferred or never happen as the teaching workforce becomes demoralized and demotivated by the attack on its pension arrangements. The timing has also caused significant distress to teachers in the current academic year with Governors unable to effectively plan staffing changes and forced on many occasions to lose teachers who they had only just appointed.

We also draw to your attention the continuance of significantly enhanced severance arrangements within other areas of the public sector to allow for change and rationalization of the public services in the RPA. With respect to parity it would be appropriate to ensure that teachers are given parity with their colleagues in rest of the public sector when there is significant organisational change being implemented in education.

INTO now asks for these proposals to be withdrawn and for the Department to engage through the agreed collective bargaining machinery in meaningful consultation and negotiation to agree interim arrangements and find a way forward for the entire teaching workforce in Northern Ireland.

We commend this response to you.