



Department
for Education

The Teachers' Pension Schemes (Amendment) Regulations 2019

Government consultation

Launch date 15 May 2019

Respond by 25 June 2019

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Introduction

The Department for Education (the Department) is consulting on a draft statutory instrument (SI), referred to in this document as the draft regulations, which would amend some rules of the England & Wales Teachers' Pension Scheme (TPS) and associated schemes.

Who this is for

This consultation focuses on the TPS, which provides a pension for participating teachers and other eligible staff working in the education sector in England and Wales.

The Department has a published list of organisations that it would expect to consult on proposed scheme changes and those on the list will be contacted. The list includes member representatives, TPS employers and other sector bodies.

Issue date

The consultation was issued on 15 May 2019.

Enquiries

If your enquiry is related to the policy content of the consultation you can contact the team on:

- 01325 340679 and ask for Kevin Connolly.

or email: TPS.CONULTATIONS@education.gov.uk

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the DfE Ministerial and Public Communications Division by email: Consultations.Coordinator@education.gov.uk or by telephone: 0370 000 2288 or via the [DfE Contact us page](#).

Additional copies

Additional copies are available electronically and can be downloaded from [GOV.UK DfE consultations](#).

The response

The results of the consultation and the Department's response will be [published on GOV.UK](#) in summer 2019.

Background and context

The TPS provides pensions and other benefits to teachers in England and Wales. The scheme is made up of three distinct sections. There are two final salary pension sections, with a normal pension age of 60 or 65, provided for by the Teachers' Pensions Regulations 2010 (SI 2010/990) ('the 2010 Regulations'). The third is a career average section which covers the majority of TPS members, including any new teachers joining, provided for under the Teachers' Pension Scheme Regulations 2014 (SI 2014/512) ('the 2014 Regulations').

Other regulations affecting the TPS that are relevant to this consultation are the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994 (SI 1994/2924), which allows members to supplement the value of their pension by making additional contributions to a third-party provider. The Teachers (Compensation for Redundancy and Premature Retirement) Regulations 2015 (SI 2015/601) provide for payment of redundancy and premature retirement compensation to scheme members. The Teachers' Pensions Regulations 1997 (SI 1997/3001) ('the 1997 Regulations') were revoked with savings by the 2010 regulations, however some minor amendments to the manner in which those savings operate are considered to be necessary as described below.

This document explains the purpose and effect of the provisions set out in the draft regulations, which are also available on GOV.UK. There are three main proposals to amend the above scheme regulations for the following purposes:

- Following the Supreme Court judgment in the case of *Walker v Innospec Ltd* ([2017] UKSC 47), civil partners and same sex spouses will have the same survivor pension rights as widows;
- Following the Supreme Court judgment in the case of *Brewster v Northern Ireland Local Government Officers' Superannuation Committee* ([2017] UKSC 8), the requirement to nominate an unmarried partner for survivor benefits would be removed where the remaining qualifying conditions are met; and
- Miscellaneous minor amendments to improve the operation of scheme rules.

Consultation questions

The Department welcomes comments and views on the proposals set out in this document and the draft regulations. Respondents are invited to consider the following questions in reply.

1. Do you agree that the proposed amendments to the TPS regulations deliver the policy objectives as set out in the consultation document?
2. If 'No', why?
3. Are there any changes needed to ensure the proposed amendments deliver the policy objectives?

4. Are there any equality impacts as a result of any of the proposed amendments that the Department has not identified and needs to take account of?

5. Are there any additional comments you wish to provide with regard to the proposed amendments to scheme regulations?

We would like to hear your views on our proposals.

Respond online

To help us analyse the responses please use the online system wherever possible. Visit www.education.gov.uk/consultations to submit your response.

Other ways to respond

If for exceptional reasons, you are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may download a word document version of the form and email it or post it.

By email

- TPS.CONULTATIONS@education.gov.uk

By post

TPS Pensions Policy Team
Department for Education
Bishopsgate House
Darlington
DL1 5QE

Deadline

The consultation closes on 25 June 2019.

Entitlement for surviving civil partners and same-sex spouses

Background

Amendments are required to the TPS regulations to provide civil partners and same sex spouses with the same pension benefits as widows. This is in accordance with a Supreme Court judgment in the case of Walker v. Innospec Ltd [2017] UKSC 47, brought to the Employment Tribunal under the Equality Act 2010.

As a result of the judgment, public sector schemes including the TPS must amend their rules to provide equal survivors' benefits for same-sex couples (whether married or in civil partnerships) as those currently provided for the female spouse of a male member in an opposite-sex marriage.

The government determined that schemes should consult on changes that provide for:

- the survivors of male same-sex partners to have their entitlements equalised with those of widows; and
- the survivors of female same-sex partners to have their entitlements equalised with those of widows.

Proposed amendments

The TPS has always provided equalised benefits between male and female same sex couples in the 2014 section of the TPS, and in respect of service from 6 April 1988 in the 2010 section.

As a result of the Walker judgment, the Department is now consulting on changes to the 2010 section of the TPS to provide that the benefits payable to survivors of same-sex marriages and civil partnerships are equalised with those provided for widows. The proposed changes are to be made with retrospective effect and apply to civil partnerships formed from 5th December 2005, (the date civil partnerships were introduced) and to same sex marriages that took place following their introduction on 13th March 2014.

The draft regulations intend to provide for a surviving civil partner or a surviving same sex spouse to receive a pension calculated in the same way as those provided to widows.

Amendments are made to the 2010 Regulations by the following draft regulations – 6, 16(b), 18(a), 18(b), 18(c), 19(a), 19(b), 19(c) and 19(d).

Relevant amendments are made to the manner in which the revoked 1997 regulations continue to operate in certain cases by draft regulations 34 (3) and 34 (4). These amendments are in respect of members who had entered a civil partnership and died prior to 01 September 2010, when the 2010 Regulations came into force, and ensure

that the appropriate corresponding regulation will apply under the transitional arrangements in Schedule 13 to the 2010 Regulations. Other than addressing the appropriate corresponding regulation, it is not thought to be necessary to make other amendments – e.g. to the term “surviving nominated partner”, as it is the 2010 Regulations which will have effect.

This consultation does not consider the issue of male survivors of opposite sex marriages. That is something that was covered in the joint HM Treasury and Department for Work and Pensions review of survivor benefits in occupational pension schemes. No final decisions have been made on the issues involved in this complex area and the government will respond in due course. We will consider what, if any, further amendments to the TPS regulations are needed at that stage and consult stakeholders as appropriate.

Respondents are asked to consider whether;

- the amendments achieve the stated policy aim as outlined above?
- transitional provisions satisfactorily provide for those survivors of a civil partnership where the member died before the 2010 Regulations came into force on 01 September 2010?
- regulation 6, which omits regulations 2A and 2B of the 2010 Regulations, would affect any other members?
- any additional amendments are required?

Consequences for members who have made additional contributions to increase survivor’s benefits

As a result of these amendments, some surviving same sex spouses and civil partners may become entitled to an increased pension. In addition some members may have paid unnecessary additional voluntary contributions to purchase back reduced lump sums or may have received unnecessarily reduced lump sums at retirement. Teachers’ Pensions will advise the affected surviving partners of any action they need to take to assist the scheme administrator in rectifying the position.

Removal of requirement to nominate unmarried partners for survivor benefits

Background

As well as providing pension benefits to those in a legally recognised relationship (marriage/civil partnership) upon the death of a scheme member, the TPS also provides a survivor's pension to qualifying unmarried partners based on the pensionable service of the member in the scheme from 1 January 2007.

In order to qualify for this benefit, an unmarried co-habiting partner must have been nominated to receive the pension before the member's death and to have been in a financially interdependent and co-habiting relationship for at least two years before the member's death (amongst other conditions). The validity of the nomination is tested at the time that the member dies.

In February 2017, the Supreme Court handed down its decision in the Brewster case. The court determined that where the other qualifying criteria are met, the requirement for a nomination to be in place adds nothing to the objective inquiry as to whether an unmarried partner satisfies the relevant conditions and that the requirement results in less favourable treatment on the basis of marital status. The Court dis-applied the nomination requirement, having found it to be unlawful.

Although this particular case did not involve the TPS, the government has confirmed that all of the public service pension schemes will make changes to ensure they contain similar provisions.

The judgment does not call into question the remaining qualifying criteria, namely that for a continuous period of at least two years ending with the member's death, the member and the partner were:

- Living together as if they were married or civil partners;
- Not legally prevented from marrying or entering into a civil partnership;
- Neither were living with a third person as if they were married or civil partners, and;
- Financially interdependent or the partner was financially dependent on the member.

Proposed amendments

The draft regulations propose changes with retrospective effect in relation to members who have service on or after 1 April 2007 so that a survivor's pension is paid to a person who meets surviving partner qualifying criteria but without the need for a nomination to have been completed.

Nominations for lump sum payments (death grants) are unaffected by the change proposed in draft regulations. Members will still be able to nominate one or more beneficiary of a death grant, with payment made to the member's surviving adult or estate should no lump sum nomination have been made.

There are also some limited circumstances in which a member can nominate a beneficiary where they do not have a partner who would be eligible for a survivor's pension. The member would still be able to nominate a beneficiary, where they meet the eligibility criteria, following these amendments being made.

Amendments are made to the 2010 scheme regulations by draft regulations 7, 9, 10, 11, 12, 13, 15, 16, 18(c), 18(d) and 19(e). Equivalent amendments are made to the 2014 Regulations by draft regulations 21, 23, 24, 25, 27 and 29(b).

Amendments are made to the manner in which the revoked 1997 Regulations continue to operate in respect of certain cases by draft regulation 34 (2). The amendment is in respect of members who satisfied the surviving qualifying partner requirements and died prior to 01 September 2010, when the 2010 Regulations came into force. The amendment ensures that provisions corresponding to those now in the 2010 Regulations will apply under the transitional arrangements in Schedule 13 to the 2010 Regulations.

The same requirement exists for a nomination to be made for an unmarried partner where the member contributes to the supplementary scheme. We are therefore also proposing equivalent changes to the AVC (1994) Regulations by draft regulations 3(a), 3(c) and 3(d) to ensure equal treatment.

Respondents are asked to consider whether;

- the draft regulations achieve the policy intentions stated above?
- there are any comments on the impact for nominated beneficiaries?
- the draft regulations ensure that, as intended, events prior to the 2010 regulations coming into force on 01 September 2010 are also included?

Other amendments

Other amendments are proposed as follows;

Pension Protection Lump Sum Death Grants

A death grant is payable to the beneficiary of a deceased member if certain conditions are met. A death grant paid under the existing regulations meets the requirements of a defined benefit lump sum death benefit as set out in the Finance Act 2004. These payments are classed as a crystallisation event and, in some circumstances, may be subject to tax. Where a member has pension protection they may make an election for any death grant payment to be paid as a Pension Protection Lump Sum Death Benefit. The advantage to the beneficiary is that these death grants are not regarded as a benefit crystallisation event and therefore are not calculated against the member's lifetime allowance.

A new regulation is proposed to make clear to members that they have the option to elect for any death grant payment to be paid as a Pension Protection Lump Sum Death Benefit.

Draft regulation 8 amends the 2010 Regulations and draft regulation 26 makes an equivalent change to the 2014 Regulations.

Ill-health Pensions

Ill-health pensions are paid to ensure that a member is financially supported during a time when they are unfit to earn a salary from their profession.

Regulations currently provide that the payable date for an ill-health award can be within six months of the date of the medical report used to determine that the member satisfies the ill-health criteria.

An amendment to regulations is required to confirm the longstanding intention that the medical report is recent - as medical advances are constantly being made, the medical report used to determine that the ill-health criteria has been met should be current.

The draft regulations provide that the medical report which demonstrates eligibility to an ill-health award is dated within eighteen months of the application. This regulation ensures that ill-health retirement applications are determined using recent medical evidence. It also provides that an ill-health award could be backdated by up to a total of two years, which is consistent with other provisions (e.g. up to two years after leaving pensionable service is allowed for the member to gather sufficient evidence so that an ill-health application can be treated as in-service).

Draft regulation 17(b) amends the 2010 Regulations and draft regulation 22 makes an equivalent change to the 2014 Regulations.

Jewish Schools Network

An amendment to the list of establishments at which service is pensionable with employer consent is made to include the Jewish Schools Network as a scheme employer. This change is made on the basis that they are akin to the Association of Christian Teachers, Catholic Education Service etc. and will allow those who meet the definition of an organiser to participate in the TPS.

Draft regulation 14 amends the 2010 Regulations and draft regulation 28 makes an equivalent change to the 2014 Regulations.

Miscellaneous minor amendments

A number of further amendments are proposed to make minor amendments and to make minor drafting corrections as follows;

2010 Regulations

Draft regulation 17(a) makes an amendment to Paragraph 3 (3) (a) of Schedule 7 to the 2010 Regulations to ensure that they are aligned to the 2014 Regulations by extending the list of circumstances in which an application to ill-health retirement can be accepted on in-service terms.

A reference to 'family benefit qualification service' is amended to 'adult pension qualification service' in Schedule 8 (draft regulation 18(d)(iii)(aa) to the 2010 Regulations.

2014 Regulations

Draft regulation 29(a) amends Schedule 3 to the 2014 Regulations to clarify that "post benefit service" includes where members have taken benefits from the 2010 section of the TPS. The result of this amendment confirms that those members who then join the career average scheme should be treated as re-employed and therefore be subject to one year qualifying service rather than the two years required of a new member.

Teachers (Compensation for Redundancy and Premature Retirement) Regulations 2015

Draft regulation 31(a) corrects a reference to a redundant clause in the definition of "appropriate person" that was identified by the Joint Committee on Statutory Instruments.

Draft regulations 31(b) and (c) update the regulations which contain the definitions of "compensating authority" and "deciding authority".

Draft regulation 32 provides the necessary authority from the scheme manager to allow a third party to administer and manage the scheme, and applies from when those

regulations came into force. This change is required to adhere to the rules of the Public Service Pensions Act 2013.

Draft regulation 33 provides a correction on the interpretation of the value of the long term rate of compensation on death that the beneficiary of a credited member, who was in the NPA 65 section or Career Average section of the TPS, is entitled to. The long term rate should state 37.5% of the rate of discretionary compensation that was being paid to the member before their death.

Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994

Draft regulation 3(b) updates the regulation which provides the definition of 'eligible child' as it is incorrectly referenced.

Draft regulation 4(a) is a correction of an amendment made which inadvertently removed provision for the early payment of AVC benefits on ill-health grounds.

Draft regulation 4(b) updates the appropriate part of the Registered Pension Schemes (Authorised Payments) Regulations 2009 that allows a small amount of pension left over to be extinguished by a 'small pot' payment.

Respondents are asked to consider whether;

- the draft regulations achieve the stated aims of the miscellaneous amendments?
- there are any consequences of making these changes that are not highlighted in this consultation document?
- there are any further comments on the miscellaneous amendments?

Public Sector Equality Duty

The Public Sector Equality Duty places a legal obligation on the Department to consider how its policy decisions impact differently on different people. When making decisions about policies, the Department must have due regard to the need to eliminate discrimination and to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are:

- sex
- race
- disability
- religion or belief
- sexual orientation
- pregnancy and maternity
- gender reassignment
- age

Note: marriage and civil partnership are also protected characteristics but are not relevant to the Public Sector Equality Duty.

Understanding the possible impact that policy decisions could have on different groups helps us to identify, avoid and manage negative equality impacts.

Consideration of the impact of the changes that are subject to consultation is ongoing, however the Department believes that equality between members will be enhanced as a result of the removal of the nomination form requirement and by equalising entitlement of surviving civil partners and same-sex spouses. Other changes are minor and are not thought to adversely affect any group. The issue of male survivors of opposite sex marriages is being considered by the government separately.

Respondents are asked to consider whether;

- there are any equality impacts as a result of any of the proposed amendments that the Department has not identified and needs to take account of?

Next Steps

After the consultation has closed on 25 June 2019, responses will be fully considered before changes to TPS regulations are finalised, expected to be by autumn 2019. A consultation response document will be published.



Department
for Education

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