



Department
for Education

Teachers' Pension Scheme: proposed changes to scheme regulations

Government consultation

Launch date 07 April 2021

Respond by 01 June 2021

Contents

Introduction	3
Who this is for	3
Issue date	3
Enquiries	3
Additional copies	3
The response	3
Background and context	4
Consultation questions	4
Respond online	4
Other ways to respond	5
Deadline	5
Entitlement for female members with a surviving male spouse or civil partner	6
Background	6
Proposed amendments	6
Implementation	7
Phased withdrawal of independent schools	8
Background	8
Proposed amendments	8
Implementation	9
Miscellaneous minor amendments	10
Public Sector Equality Duty	11
Next Steps	13

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 and Wales Teachers' Pension Scheme (TPS).

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 with 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 07 April 2021.

Enquiries

If your enquiry is related to the policy content of the consultation you can contact the team by emailing tps.consultations@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 2021.

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 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).

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

- to provide female members in an opposite-sex marriage or civil partnership with the same survivor pension rights as female members in a same-sex marriage or civil partnership; and
- to amend participation rules relating to accepted schools to allow for the phased withdrawal of independent schools that might otherwise leave the TPS outright with immediate effect.

There are also other minor amendments to ensure consistency.

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.consultations@education.gov.uk

By post

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

Deadline

The consultation closes on 01 June 2021.

Entitlement for female members with a surviving male spouse or civil partner

Background

As a result of the Supreme Court judgment in the case of Walker v. Innospec Ltd [2017] UKSC 47, which had implications for all public service pension schemes, survivor benefits under the TPS were equalised for same-sex couples (whether married or in a civil partnership) so that the survivor of a TPS member (whether a widower or a widow) has the same rights as a widow of a male scheme member. This was achieved by amending the 2010 regulations in September 2019.

Amendments were made retrospectively, effectively to 5 December 2005 as this is the date from which a same-sex civil partnership could have been formed or recognised in the UK under the Civil Partnership Act 2004, and therefore the date from which there could have been eligibility in the TPS for survivor benefits to be paid to a same-sex partner.

Following the September 2019 amendments, a claim was brought to the Employment Tribunal by Mrs Goodwin ([Case Number 1308505/2019](#)) under s.61 of the Equality Act 2010 (requiring occupational pension schemes to have a non-discrimination rule read into them) alleging that the 2010 regulations directly discriminate on the grounds of sexual orientation. This was because as a female member of the scheme, the benefits payable to a surviving opposite-sex spouse would be lower than would be the case if she was in a same-sex marriage or civil partnership. After consideration of the issues, the Department accepted that the rules are discriminatory and breach the non-discrimination rule in s.61. A declaration was made by consent by the Employment Tribunal to that effect.

Information was published on the [Teachers' Pensions website](#) setting out the Department's intended response. The response also confirmed that the changes which benefit female members who have a surviving male spouse would also benefit female members who have a surviving male civil partner. This follows the introduction of opposite-sex civil partnerships in late 2019 and amendments which were made to the 2010 regulations by the Civil Partnership (Opposite-sex Couples) Regulations 2019 (SI 2019/1458).

Proposed amendments

When agreeing the declaration in the Goodwin case, the Department stated that it was intended to make amendments to the 2010 regulations to address the discrimination admitted in the claim. The proposed amendments to TPS rules are to provide equal survivors' benefits that would be payable to the opposite-sex spouse or civil partner of a female member as would be paid to a same-sex spouse or civil partner of a female member.

Regulations are drafted so that benefits payable to an eligible survivor would be based on all pensionable service accrued by the member from 1 April 1972 where the marriage or civil partnership took place before the member left pensionable service, or

from 5 April 1978 where it took place after the member left pensionable service. Currently, a survivor's pension for the opposite-sex spouse or civil partner of a female member would be based on pensionable service from 06 April 1988.

The proposed changes would apply retrospectively to cases where a female member, with an eligible opposite-sex spouse or civil partner, has died since 5 December 2005 which is the date from which there could have been a difference in treatment.

The TPS has always provided equalised benefits for eligible survivors in the 2014 section of the scheme and therefore it is only the 2010 section that requires amendments.

Relevant amendments are made to the 2010 regulations by draft regulations 12 to 14.

Respondents are asked to consider;

- do the amendments achieve the stated policy aim as outlined above?
- are there any other comments?

Implementation

As a result of the proposed changes to scheme rules described above, the value of survivor pensions payable to some male survivors of female members may increase.

Where this relates to a female member who has died on or after 5 December 2005, there may also be a payment of arrears, with interest, due to the survivor. If the survivor has also died, since 1 September 2019, those arrears would be payable to their estate.

The scheme administrator will be contacting those known to be affected and therefore no action is needed to instigate a review of a survivor pension in payment.

The changes to TPS rules would also affect female members who made additional Family Benefit contributions to purchase increased survivor benefits for their male spouse or civil partner, by covering some or all of their pensionable service between April 1972 to April 1988. The scheme administrator will review member records to identify and contact those female members who paid additional contributions to cover service that would now be provided automatically as a result of the above changes.

Further information for members and survivors is provided on the [Teachers' Pensions](#) website and will be regularly updated as addressing the casework progresses.

Phased withdrawal of independent schools

Background

In November 2020 the Department published its response to the [phased withdrawal public consultation](#). The consultation concerned a proposal to amend TPS rules so that independent schools in England and Wales could opt out of TPS participation for future employees whilst allowing existing staff to remain as active members. Unlike other employers in the TPS, independent schools participate in the TPS voluntarily and are therefore free to leave, but if they do leave then all current members cease participation immediately. Approximately half of independent schools in England and Wales choose to participate in the TPS.

The response confirmed that, after careful consideration, the phased withdrawal proposal would be accepted and rules amended so that for those independent schools that consider they cannot afford to remain in the TPS and would otherwise have to withdraw all staff immediately, teachers in the scheme at the time that a school elects for phased withdrawal would continue to be active members.

As with those independent schools that do not participate in the TPS, employers who elect for phased withdrawal must provide an alternative workplace pension for those teachers who would no longer be eligible for the TPS and contribute towards it.

Proposed amendments

During discussions with stakeholders regarding the policy and the subsequent public consultation, there were some concerns expressed that certain groups could be disproportionately affected by phased withdrawal. This included where an opt-out has been submitted prior to an independent school electing for phased withdrawal and a member leaving pensionable service after phased withdrawal was adopted, where this was due to family leave or sick leave.

The draft regulations therefore provide for the following:

- A teacher who opted out of the TPS would be eligible to be re-enrolled where that election to opt-out took effect prior to the date that the school became a phased withdrawal school;
- Similarly, a teacher who is a deferred member immediately prior to the phased withdrawal date due to a period of non-pensionable family leave, non-pensionable sick leave or unpaid leave, none of which lasted more than 5 years, would be eligible to be re-enrolled immediately upon their return to the same employer;
- A teacher who leaves pensionable service after their school is accepted for phased withdrawal, due to family leave or sick leave which lasted no more than 5 years, would be eligible to be re-enrolled upon their return to the same employer;

- Creation of a new type of guarantee where an independent school elects for phased withdrawal to distinguish from the guarantee required from accepted schools. The regulations would allow for the continuation of the guarantee requirement that was in place as an accepted school;
- An independent school that opts for phased withdrawal would be entitled to re-apply to be a fully accepted school if they wish to resume full participation at a future date.

Relevant amendments are made to the 2010 regulations by draft regulations 4, 6, 7, 9 and 10 and to the 2014 regulations by draft regulations 18 and 19.

Implementation

The intention is that regulations would be in place for 1 August 2021. A school would become an accepted phased withdrawal school on the first day of the month after a successful application was made and therefore this would allow for phased withdrawal from September 2021.

Following the consultation, the Department would provide clear information for independent schools to explain employer responsibilities for any school considering adopting phased withdrawal. Information would also be available for teachers to explain the circumstances in which phased withdrawal may affect them.

Respondents are asked to consider;

- do the amendments achieve the stated policy aim as outlined above?
- are there any other comments?

Miscellaneous minor amendments

There are three areas in which amendments are proposed to be made to clarify the longstanding policy or to make minor drafting corrections as follows;

- Clarification of the longstanding policy approach that employer contributions are not refundable if a period of service is disappplied due to it becoming non-pensionable – e.g. non-payment of contributions by the member within 3 years.

Relevant amendments are made to the 2010 regulations by draft regulations 5 and 8 and to the 2014 regulations by draft regulations 16 and 17.

- Correction of a drafting error in the 2010 regulations that refers to a death grant “nominee” that should refer to a “beneficiary”. Members do not have to make a nomination for the death grant recipient, in which case there is a hierarchy for who the beneficiary will be.

Relevant amendments are made by draft regulation 11.

- Clarification in the 2014 regulations that transitional protection should include those mixed-service members who had taken some, but not all, of their Final Salary benefits on or after 1 April 2012. Regulations currently refer to transitional protection ending if the member takes “a pension” when the intention is that this protection should only end if the member has taken all of their Final Salary benefits.

Relevant amendments are made by draft regulation 20.

Respondents are asked to consider;

- do the amendments achieve the stated policy aim as outlined above?
- are there any other comments?

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

The Department considers that equality between members would be enhanced as a result of the amendments to survivor benefits to equalise treatment for an opposite-sex survivor of a female member when compared with a same-sex survivor of a female member.

Throughout the development of the phased withdrawal proposal, the impact on various groups has been considered. This was covered in detail in the [consultation response](#). The main equality concerns arising from the proposal related to teachers who had opted out of the TPS, who tend to be younger, and those leaving pensionable service as a result of an extended break which could disproportionately affect female teachers taking maternity leave. Similarly, those with a longstanding health condition could be affected by a prolonged period of sick absence.

The Department has continued to consider this duty following that response. Accordingly, the proposed regulations include a number of protections for existing teachers at an independent school that elects for phased withdrawal.

For new teachers at a phased withdrawal school, the Department considers that access to a workplace pension would be no different to the alternative to phased withdrawal, which is an independent school leaving the TPS outright. In those circumstances, an alternative pension scheme must be provided and a new teacher joining a phased withdrawal school would therefore be in the same position as without phased withdrawal being introduced.

Other changes are minor and do not introduce any changes to the longstanding policy position, and therefore are not thought to adversely affect any protected group.

Understanding the possible impact that policy decisions could have on different groups helps us to identify, avoid and manage negative equality impacts. The Department has not identified any disproportionate impacts relating to the relevant protected characteristics as a result of proposed changes which are subject to this consultation.

Respondents are asked to consider whether;

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

Next Steps

After the consultation has closed on 01 June 2021, responses will be fully considered before changes to TPS regulations are finalised, expected to be by summer 2021. A consultation response document will be published.



Department
for Education

© Crown copyright 2021

This document/publication (not including logos) is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

To view this licence:

visit www.nationalarchives.gov.uk/doc/open-government-licence/version/3

email psi@nationalarchives.gsi.gov.uk

write to Information Policy Team, The National Archives, Kew, London, TW9 4DU

About this publication:

enquiries www.education.gov.uk/contactus

download www.gov.uk/government/consultations



Follow us on Twitter:
[@educationgovuk](https://twitter.com/educationgovuk)



Like us on Facebook:
facebook.com/educationgovuk