



Department  
for Education

# **Consultation on teachers' pension scheme regulations: proposed amendments 2017**

**Summary of comments received and  
government response**

**November 2017**

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## Introduction

1. Following the introduction of reforms to the Teachers' Pension Scheme (TPS), in April 2015, the Department identified technical amendments which are required to the Teachers' Pensions Regulations 2010 (TPR 2010) and the Teachers' Pension Scheme Regulations 2014 (TPSR 2014).
2. These relate to four specific areas: ill-health retirement; serious ill-health commutation; phased retirement in relation to irregular workers; and minor technical amendments, and are needed to ensure the arrangements work fully as intended, in line with previous consultations on the regulations involved.

## Why the Department consulted on further changes to the TPS arrangements

3. The explanatory note to the regulations provides more detail on the changes involved but in summary they are as follows:

### Ill-Health

4. As part of reforms to the TPS, the Department amended the arrangements covering applications for ill-health retirement benefits. This included extending the time for in-service applications from six months to two years in order to better provide for those with slow to develop and hard to diagnose illnesses.
5. In order to fully deliver the intended policy, an amendment is required to the TPR 2010 to remove the condition that the member must be permanently incapacitated at the point of leaving pensionable service.
6. A further amendment was proposed to the TPR 2010 and the TPSR 2014 to reinforce the need for a link between the illness at the point of leaving and the illness at the time of application.
7. These changes make it clear that members who are ill at the point of leaving, but have not yet met the incapacity condition, can subsequently (within two years) make an application which will be considered against the in-service criteria where the same, or connected, illness is involved.

### Serious Ill-Health Commutation

8. The policy here is that once a member chooses ill-health commutation and the application for that is approved, then that is the benefit that will be paid, including in the unfortunate event that the member dies between the application being accepted and a payment being made.
9. This follows the overall policy intention within the TPS that the benefit chosen by the member is, where possible, the benefit that is paid. The regulations as currently

drafted do, however, create the possibility for some ambiguity over the payments that should apply.

## **Phased Retirement Pensionable Earnings**

10. The current provisions require that a member, who elects for phased retirement, must take a reduction in pensionable earnings of no less than 20% of their pre-phased retirement pensionable earnings. Pre-phased retirement earnings are currently determined using the member's average annual earnings in the six months immediately before taking phased retirement. This provision does not appropriately cover all member types; in particular, it can cause problems for irregular workers where, for example, the sixth month period immediately before phased retirement includes unpaid holidays.
11. To address this issue, the Department proposed changing the pre-phased retirement average earnings calculation to the average over the last 12 months.

## **Technical Amendments**

12. The Department also proposed making the following technical amendments to ensure the policy intention is clearly reflected in the regulations:
  - An amendment to the wording of the regulation for late retirement actuarial enhancement in the career average arrangements to clarify that only pension accrued up to normal pension age is enhanced.
  - An amendment to change the reference to "employer" in paragraph 8 (1) of Schedule 1 to the 2014 Regulations to "scheme manager" to correct a drafting error.
  - An amendment to provide that an out-of-service early retirement application is voided if the member returns to eligible employment before the entitlement date specified in the application.

## **Consultation process**

13. The consultation ran from 29 July 2016 to 16 September 2016. The consultation document and draft regulations were available on the Gov.UK website and responses could be sent to the Department for Education by email or by post.
14. On publication, details of the consultation were sent to key stakeholder groups and representative bodies, including the teacher unions and employer associations. In addition, the Department has proactively engaged and met unions and employers to discuss the proposals, before, during and after the consultation process.

## **Summary of responses received and the Government's response**

15. In total 4 written responses were received. These included responses from teacher unions and an independent stakeholder.
16. The Department has considered each response and a summary of the main points raised under each section of the consultation, along with the Department's final position, is set out below.

### **Consultation Responses**

17. The Department asked for stakeholders' views on the proposals to amend 4 specific provisions of the regulations.

### **Amendment 1: Ill-Health**

18. There were three responses to this provision, all of which support the Department's intention to remove the requirement for a member to be permanently incapacitated at the point of leaving pensionable service.
19. One response referred to the insertion of paragraph (3A) into regulation 110 of the Teachers' Pension Scheme Regulations 2014. The query related to the use of "eligible employment" in sub-paragraph (a) and asked if "pensionable service" was the correct term.

### **Government's response on Amendment 1**

20. The Department is grateful for the views received and agrees that the regulations, as proposed, will clarify the policy that a member does not need to be permanently incapacitated at the point of leaving pensionable service. This will help those with slow to develop, or hard to diagnose, illnesses to have the same access to ill-health benefits as other members.
21. The provision of paragraph (3A) (a) relates to the illness at the point the member leaves all pensionable service and requires a link between that illness and the illness at the point of an ill-health application. The correct term should therefore be "pensionable service".
22. The Department also accepts the view of one respondent, that the ill-health provisions are, unavoidably, complex and we will ensure appropriate guidance is made available to all members.

## **Amendment 2: Serious Ill-Health Commutation**

23. Only one of the respondents responded directly to this provision albeit the others expressed their agreement with all the proposed changes. The respondent was concerned that the proposed change could, in some circumstances, reduce the value of benefits payable to the member's beneficiaries. Instead the respondent proposed that, where the value of a death grant would exceed the value of commuted pension, the higher value should be paid.

### **Government's response on Amendment 2**

24. The Department has considered the proposal to provide a best-of-both provision for serious ill-health applications; however, we do not consider this is an appropriate way forward.

25. The intention of the proposal is to clarify the position whereby an application for serious ill-health commutation is accepted and to ensure the member has the power to determine how, and to whom, their benefits are paid.

26. It is accepted that the value of a death grant may, in some circumstances, be higher than the value of commutation. Equally, the value of commutation may be greater than that of a death grant. The intention of this amendment however is to empower the member so that they can make an informed choice, based on their personal circumstances.

27. The Department does not consider it appropriate to second guess a member's intentions, or to presume the purpose of commutation. The proposed amendment will make it clear that a member has the power to decide which payment should be made.

28. To assist members in this situation the Department will develop and publish guidance and ensure Teachers' Pensions can provide estimates of each benefit type to members on request.

## **Amendment 3: Phased Retirement Pensionable Earnings**

29. All those who responded to this proposal were in agreement that the amendment would reduce the possibility of detrimental treatment of part-time and irregular workers.

### **Government's response on Amendment 3**

30. The Department appreciates the comments made and will ensure the amendment is appropriately communicated.

## **Amendment 4: Technical Amendments**

31. Three of the respondents directly supported these technical amendments with the fourth showing support for all the proposals.

## **Government's response on Amendment 4**

32. The Department is grateful to all respondents for their views and will proceed, as proposed, with the technical amendments.

## **Government's overall response**

33. The Department appreciates the work that respondents have put into considering and commenting on the issues involved. The Department has looked closely at all of the comments raised. In line with the above responses the Department considers that the draft regulations should now form the basis of the final regulations.

## **Next steps**

34. The draft regulations will now form the basis of the final regulations. The aim is to complete work on these and make and lay them before Parliament in November 2017. The amendments will come into force on 30 November 2017.

## **Annex A: List of organisations that responded to the consultation**

The following is a list of people and organisations who responded to the consultation.

- Association of School and College Leaders (ASCL)
- National Association of Schoolmasters Union of Women Teachers (NASUWT)
- National Union of Teachers (NUT)
- Prudential





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