



Department
for Education

The Teachers' Pension Schemes (Amendment) Regulations 2019

Government consultation response

July 2019

Contents

Contents	2
Introduction	3
Overall summary of responses received and the government's response	4
Main findings from the consultation	4
Entitlement for surviving same-sex spouses and civil partners	5
Background and consultation proposal	5
Consultation findings	6
Government response	6
Removal of requirement to nominate unmarried partners for survivor benefits	8
Background and consultation proposal	8
Consultation findings	8
Government response	9
Other amendments	10
Pension Protection Lump Sum Death Grants	10
Ill-health Pensions	10
Jewish Schools Network	10
Consultation findings	11
Government response	11
Miscellaneous minor amendments	12
Amendments to the 2010 Regulations	12
Amendments to the 2014 Regulations	12
Amendments to the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 2015	12
Amendments to the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994	12
Consultation findings	13
Government response	13
Public Sector Equality Duty	14
Government's overall response	15
Next steps	16

Introduction

1. The Department for Education (DfE) published for consultation a draft statutory instrument proposing amendments to the regulations which set out the rules for the Teachers' Pension Scheme (TPS) in England & Wales and associated schemes.
2. The consultation was to gather views on the proposals which covered the following areas:
 - (a) Following the Supreme Court judgment in the case of *Walker v Innospec Ltd*, same-sex male couples (whether married or in a civil partnership) will have the same survivor pension rights as provided for widows;
 - (b) The government decision that, in line with same-sex male couples, same-sex female couples (whether married or in a civil partnership) will have the same survivor pension rights as provided for widows;
 - (c) Following the Supreme Court judgment in the case of *Brewster v Northern Ireland Local Government Officers' Superannuation Committee*, the removal of the nomination requirement for unmarried partners, who satisfy the remaining criteria, to be eligible to receive survivor benefits;
 - (d) Other minor amendments, clarification of policy and correction of errors.
3. The proposals and draft regulations were subject to a public consultation which began on 15 May 2019 and ended on 25 June 2019. A document describing the proposals and draft regulations was published on the gov.uk website and consultation platform, with responses invited through the consultation platform or by email or post.
4. Key stakeholders were formally notified of the consultation. Prior to publication of the consultation document, the proposals had been discussed with the Teachers' Pensions Scheme Advisory Board (SAB). This is a statutory board, comprising of member and employer representatives, whose purpose is to provide advice to the Secretary of State for Education on the desirability of potential changes to the TPS rules.
5. The department requested comments and views on the proposals and whether the draft regulations would achieve the stated policy aim.

Overall summary of responses received and the government's response

6. A total of 28 responses were received through the consultation platform and by email, the majority of which were from individuals. Responses from organisations included:
 - (a) National Association of Headteachers (NAHT);
 - (b) The National Association of Schoolmasters Union of Women Teachers (NASUWT);
 - (c) National Education Union (NEU);
 - (d) University and College Union (UCU);
 - (e) West Sussex County Council.
7. Some respondents expressed views on topics which were outside the scope of the consultation. This document sets out the department's response to comments received on the changes that were subject to consultation.

Main findings from the consultation

8. Most of the comments received were in relation to the proposed amendments to equalise the survivor benefits received by surviving same-sex partners in a formal relationship, whether a marriage or a civil partnership, with those of a widow from an opposite-sex marriage. Respondents generally welcomed this change.
9. Other comments received were in response to the proposal to remove the nomination requirement for unmarried partner benefits and this change was also welcomed. Overall, the proposed changes were fully supported by respondents.

Entitlement for surviving same-sex spouses and civil partners

10. The consultation covered proposed amendments to regulations to provide surviving same-sex partners in a formal relationship, whether a marriage or a civil partnership, with benefits equal to those of widows.

Background and consultation proposal

11. Amendments are required to the TPS to provide same-sex civil partners and spouses with the same survivor benefits as would be provided to the widow from an opposite-sex marriage. This follows the Supreme Court judgment in the case of *Walker v. Innospec Ltd* [2017] for male same-sex partnerships and the subsequent government policy decision in relation to female same-sex partnerships.
12. The response to that judgment taken by the public service pension schemes, including the TPS, is to change scheme rules to provide the same survivors' benefits for same-sex couples in a legally recognised relationship as those payable to widows.
13. For members of the TPS this will mean payment of a survivor's pension to an eligible partner: where the marriage or civil partnership was entered into before retirement the survivor's pension will be based on all pensionable service accrued by the member from 1 April 1972; where the marriage or civil partnership was entered into after retirement, the pension will be based on all pensionable service from 1 April 1978. Currently, a survivor's pension would be based on eligible service from 6 April 1988. The amendment will apply to all same-sex marriages and civil partnerships formed on or after 5 December 2005, the date that civil partnerships were introduced.
14. The consultation was clear that it did not cover the issue of male survivors of opposite-sex marriages. This is something that was covered in the joint HM Treasury and Department for Work and Pensions (DWP) review of survivor benefits in occupational pension schemes and was under review at the time that this consultation was published.
15. The consultation also did not consider the treatment of opposite-sex civil partnerships into UK law. On 10 July, Baroness Williams announced that the government has published a paper entitled "Implementing Opposite-Sex Civil Partnerships: Next Steps". That paper sets out the government's proposal to align survivors' benefits for opposite-sex civil partners in public service pension schemes with those that are available to survivors of opposite-sex marriages. The changes needed to incorporate opposite-sex civil partnerships in the TPS regulations will be included in a future public consultation.

Consultation findings

16. The changes to provide surviving same-sex spouses and civil partners with the pension benefits that would be provided to a widow were welcomed by all of the respondents who commented.
17. Trade unions and some individuals commented that the proposed changes, while welcome, did not go far enough to eliminate all differential entitlement for those in legally recognised relationships. The changes to scheme rules mean that widowers from heterosexual marriages may receive lower survivor benefits compared to survivors from same-sex marriages and civil partnerships or a widow from a heterosexual marriage.
18. Some members in a same-sex relationship may have paid additional contributions to purchase family benefits, based on pensionable service prior to 6 April 1988. One respondent called for these members to be refunded.
19. Another respondent commented on draft regulation 6 that, although it appeared that the two regulations that would be omitted (referring to the interpretation of same-sex marriages and unmarried partners) were no longer required, it might be better to retain the interpretation in the 2010 Regulations.

Government response

20. The department welcomes the support received for the change that was proposed and will proceed to make the amendments to the TPS. The scheme administrator has taken steps to contact all those surviving partners thought to be affected and will reassess any other cases brought to them.
21. Once the regulations are in place, Teachers Pensions will advise those members in a same-sex relationship who have paid additional contributions to purchase family benefits based on pensionable service prior to 6 April 1988 of any action they need to take in order for this to be rectified.
22. The department has considered the proposal, as set out in draft regulation 6, to remove the definition of same-sex marriages and unmarried partners from the 2010 Regulations. These definitions no longer apply to the regulations and will therefore be removed.
23. The draft regulations published alongside the consultation included the phrase “with pre-1988 rights” in draft regulations 16, 18 and 19. It was pointed out that the inclusion of the term “with pre-1988 rights” in the amendment regulations is unnecessary. The department agrees that the wording is unnecessary and has removed it from the relevant provisions.
24. In relation to survivor benefits for widowers of opposite-sex marriages, this is a matter for DWP and HM Treasury. A DWP Written Ministerial Statement published

on 4 July 2019 confirmed that there will not be any further retrospective changes to the existing provisions in respect of occupational pension schemes to equalise survivor benefits.

25. In addition, the European Court of Justice looked at the issue of survivor benefits for widowers in *Barber v Guardian Royal Exchange*. The judgment required schemes to provide survivor benefits for males who survive a female spouse that are equal to those provided to females who survive a male spouse, in relation to service from May 1990. The TPS already goes further than the Barber decision required by providing equal benefits in relation to service from 6 April 1988.

Removal of requirement to nominate unmarried partners for survivor benefits

26. The consultation covered disapplying a scheme rule requiring an unmarried scheme member to have nominated their co-habiting partner in order for that partner to be eligible to receive survivor pension benefits in the event of the death of the member.

Background and consultation proposal

27. Amendments to scheme regulations were proposed to remove the requirement for a nomination form to be submitted so that a member's unmarried partner could receive survivor benefits if the member died before them. This resulted from the *Brewster v Northern Ireland Local Government Officers' Superannuation Committee* Supreme Court judgment which found that a nomination form was unnecessary in deciding whether a member and partner were sufficiently interdependent and therefore that a survivor's pension should be paid.

28. In response to the judgment, HM Treasury determined that public service pension schemes should remove the requirement for a nomination form with retrospective effect. In the TPS, this will apply to a surviving unmarried partner of a member who has the minimum qualifying period of 2 years' pensionable service from 1 January 2007.

29. The judgment did 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 prevented from marrying or entering into a civil partnership;
- Financially interdependent or the partner was financially dependent on the member; and
- Neither were living with a third person as if they were married or civil partners.

Consultation findings

30. The changes to the provisions for unmarried surviving partners were welcomed by all respondents who commented. Two respondents commented that the nomination form is useful and suggested that the department retains an optional nomination form as a best practice.

Government response

31. The department notes that the amendments were universally welcomed and will proceed with the proposal to remove the requirement to nominate an unmarried partner for survivor's benefits.
32. The department accepts the suggestion to retain a copy of the nomination form on the scheme administrator's website for voluntary submission. The purpose of the form will be clearly communicated so that members understand that it is not compulsory.

Other amendments

33. Other general changes to the scheme were proposed as follows.

Pension Protection Lump Sum Death Grants

34. When a member elects to take their pension, the total value of that pension is calculated against the Lifetime Allowance. Where the total pension value from all pensions exceeds the Lifetime Allowance, as set by Her Majesty's Revenue and Customs (HMRC), tax is payable on the pension amount above the allowance.

35. A lump sum death grant paid to the surviving beneficiary of a scheme member is usually tax free. However, where the member has exceeded their Lifetime Allowance, and a death grant becomes payable to their surviving beneficiary, the death grant will be subject to tax.

36. A member who exceeds their Lifetime allowance has the option to request that any future death grant is protected. The advantage to the beneficiary is that these death grants are not subject to the Lifetime Allowance tax, so long as the member is under 75 years of age at the time of death.

37. A new regulation was proposed to make clear to members who exceed their Lifetime Allowance, that they have the option to elect for any death grant payment to be paid as a Pension Protection Lump Sum Death Benefit.

Ill-health Pensions

38. 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.

39. Regulations currently provide that the payable date for an ill-health award can be up to six months before the date that the medical report, which is used to determine that the member satisfies the ill-health criteria, was produced.

40. An amendment to regulations was proposed to confirm the longstanding intention that the medical report used to determine a member's eligibility for an ill-health pension is dated within 18 months of the date that the member's application for benefits is made. This will therefore allow an ill-health pension to be backdated for up to two years.

Jewish Schools Network

41. An amendment was proposed to the list of eligible establishments to include the Jewish Schools Network as a scheme employer.

Consultation findings

42. Responses regarding these proposals were generally supportive. Two respondents stated that they were not sure that it was necessary to stipulate in the regulations that medical evidence to support an ill-health application is recent; however, both responses also stated that the timescale provided was reasonable.

Government response

43. The department notes that there were no objections to these proposals and will proceed with the amendments.

Miscellaneous minor amendments

44. There were a number of other proposals to make amendments and minor corrections as follows;

Amendments to the 2010 Regulations

45. An amendment was proposed to Schedule 7 to the 2010 Regulations to bring them in line with the 2014 Regulations. The change will extend the list of circumstances in which an application for ill-health retirement can be accepted on in-service terms.

46. An amendment was proposed to correct a reference in Schedule 8 to 'family benefit qualification service' that should say 'adult pension qualification service'.

Amendments to the 2014 Regulations

47. An amendment was proposed to Schedule 4 to the 2014 Regulations to clarify that "post benefit service" includes where members have taken benefits from the 2010 section of the TPS. This confirms the intention that members who take final salary benefits and then join the career average scheme should be treated as a re-employed member rather than a new member.

Amendments to the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 2015

48. Amendments were proposed to correct a reference to a redundant clause, update references to appropriate definitions and correct the interpretation of the value of the long term rate of compensation that the beneficiary of a credited member is entitled to.

Amendments to the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994

49. Amendments were proposed to make a number of minor corrections. These were to correct the reference to the regulation which defines 'eligible child', to update the appropriate section of the Registered Pension Schemes (Authorised Payments) Regulations 2009 that allow for 'small pot' payments, and reinstating the regulation that allows payment of Additional Voluntary Contributions (AVC) benefits on ill-health grounds that was inadvertently removed by a previous amendment.

Consultation findings

50. One respondent commented on the proposed amendment to Schedule 7 to the 2010 Regulations (R. 17a) and specifically the term 'excluded employment'. It was stated that this term did not appear to be akin to the other circumstances listed in which an ill-health retirement application is to be considered on in-service terms.
51. There were no comments received on any of the other proposed amendments.

Government response

52. The department has reconsidered the amendment to Schedule 7 to the 2010 Regulations and agrees with the respondent.
53. The term 'excluded employment' relates to a period of employment where a teacher has opted out of the TPS or was in a period of employment that is not eligible for TPS participation. It has never been the intention that a teacher who is in excluded employment would be eligible to apply for an ill-health pension on in-service terms.
54. The regulations concerning ill-health retirement applications on in-service terms have therefore been amended so that the proposed terms referred to in the consultation (non-pensionable sick leave, non-pensionable family leave and career breaks) will replace 'excluded employment'. This further change will fully achieve the policy intention and ensure that the 2010 Regulations and 2014 Regulations are aligned.
55. The other proposed amendments did not receive any comments and will also be implemented.

Public Sector Equality Duty

56. The consultation document set out the department's initial assessment of the equalities impacts of the proposed amendments to the TPS regulations and respondents were asked to highlight any other issues that they identified.
57. A number of responses referred to the survivor benefits payable to the widower of a female teacher. This consultation did not consider that issue as it was the subject of a separate government review.
58. No other equalities issues were identified in the consultation. The department considers that equality between members will be enhanced as a result of the removal of the nomination form requirement in respect of unmarried partners and by equalising entitlement of same-sex spouse and civil partner survivor benefits with those payable to widows. Other changes are minor and are not thought to adversely affect any protected group.

Government's overall response

59. 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 and, subject to some minor changes as outlined above, the regulations will now proceed to be laid in Parliament.

Next steps

60. The draft regulations will now form the basis of the final regulations, subject to the minor amendments outlined above. The amendments will come into force on 1 September 2019.



Department
for Education

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