

EXPLANATORY MEMORANDUM TO

THE TEACHERS' PENSIONS SCHEMES (AMENDMENT) REGULATIONS 2018

2018 No. 218

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Department for Education and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes amendments to the Teachers' Pensions Regulations 2010 ('the 2010 Regulations') and the Teachers' Pension Scheme Regulations 2014 ('the 2014 Regulations').
- 2.2 The purpose of the amendments is to provide clarification on the discretionary status of death grants in order to address concerns raised by Her Majesty's Revenue and Customs (HMRC) and in order to ensure that the Regulations provide for the policy intention.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Joint Committee reported on the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 2015 (S.I. 2015/601) ("the PRC 2015") which provides access to premature retirement benefits for members of the Teachers' Pension Scheme ('TPS'). Please see the 3rd report of the Joint Committee published on 11 September 2015.
www.publications.parliament.uk/pa/jt201516/jtselect/jtstatin/33/3303.htm.
- 3.2 In response to the Joint Committee's request for a memorandum, which the Department provided on 20 July 2015, the Department stated that it would make an appropriate amendment to the PRC 2015 at the next available opportunity.
- 3.3 The PRC 2015 were not amended by the next teachers' pensions regulations made after the PRC 2015 – the Teachers' Pensions Schemes (Miscellaneous Amendments) Regulations 2017 (S.I. 2017/1084) - for the reasons set out in paragraph 3 of the Explanatory Memorandum that accompanied those Regulations.
www.legislation.gov.uk/ukxi/2017/1084/memorandum/contents.
- 3.4 Those reasons still apply, as HM Treasury has yet to make secondary legislation implementing the policy regarding 'exit payments' referred to in that Explanatory Memorandum. Therefore, the Department is not yet in a position to make changes to the PRC 2015, which will include the amendment promised in the Department's memorandum of 20 July 2015, and will ensure that all necessary changes to the PRC 2015 are made in one instrument rather than spread over two.
- 3.5 It is expected that HM Treasury regulations regarding public sector exit payments will be made in due course. The Department is planning to make further regulations in

autumn 2018. Should HM Treasury regulations not be available by that time, the amendment to the PRC 2015 promised in our memorandum of 20 July 2015 will be made in later regulations.

Other matters of interest to the House of Commons

- 3.6 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The TPS is governed by the 2010 Regulations (which concern the teachers' final salary scheme) and the 2014 Regulations (covering the career average scheme). The 2010 and 2014 Regulations are being amended retrospectively to make clear that payment of a death grant to the beneficiaries of members of the pension schemes is discretionary and as a result inheritance tax is not payable on the death grant. The amendments to the 2010 Regulations have effect from 1st September 2010 which is the date the regulations which are being amended came into force. In the case of the 2014 Regulations, the amendments come into effect from 1st April 2015 being the date the regulations which are being amended came into force.
- 4.2 The amendments are necessary because if the 2010 Regulations and 2014 Regulations fail to provide that the scheme administrator of the pension schemes has discretion over whether or not a death grant is paid on the death of a member, the member will be treated as being beneficially entitled to the benefit under section 5(2) of the Inheritance Act 1984 and it will form part of the member's estate for inheritance tax purposes. In that event, the member's estate will be liable for inheritance tax on the death grant.
- 4.3 HMRC recently advised the Department that they do not consider some provisions in the 2010 and 2014 Regulations provide the required discretion. Therefore, the Department has agreed to make amendments for the sake of clarification. The amendments are made in regard to ordinary members and pension credit members under the 2014 Regulations but in respect of pension credit members only in the case of the 2010 Regulations (as HMRC are content that the provisions in the 2010 Regulations dealing with ordinary members do confer the required discretion).
- 4.4 The Regulations bring the TPS in line with the policy intentions of the DfE and with the policy of all other public sector pension schemes.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The Teachers' Pension Scheme provides pensions and other benefits to teachers in England and Wales and their beneficiaries. The scheme is made up of three distinct sections. There are two final salary pension sections, both provided for under the 2010 Regulations, made under powers in the Superannuation Act 1972. The first of these sections provides for a normal pension age of 60, while the second section provides a normal pension age of 65. The third section is a career average pension provided for under the 2014 Regulations made under powers in the Public Service Pensions Act 2013. The career average section provides for a normal pension age that is equal to the member's state pension age.
- 7.2 Under all three sections of the scheme, a death grant may be paid to the beneficiaries of a member who has died before receiving their teachers' pension, or where the member has been in receipt of a pension for less than five years.
- 7.3 A death grant is a lump sum payment, the calculation of which varies according to the status of the member at the time of their death. For a member who was active, i.e. they were paying member contributions at the time of their death, this would be 3 times the amount of their full time equivalent salary. Where the member was out of service i.e. had stopped paying contributions into the scheme, or where the member had retired, the death grant is determined by the value of the member's pension.
- 7.4 A death grant payment may be made to the beneficiaries of an ordinary member and, in some circumstances, a pension credit member. A pension credit member is a person who is entitled to a TPS pension as the result of a court approved pension sharing order from a divorce or dissolution of a civil partnership.
- 7.5 In cases where the death grant is not paid to a surviving spouse or civil partner and the estate is sufficient enough to trigger an inheritance tax charge, the death grant may be subject to inheritance tax.
- 7.6 By making this change, death grants paid to the beneficiaries of members will be exempt from inheritance tax, in line with the existing policy for other public sector pension schemes.
- 7.7 The amendments made by this instrument do not impose a burden on employers; they are made to provide clarity and align the Regulations with policy.
- 7.8 The 2010 Regulations are amended to:
- 7.8.1 clarify that payment of a death grant in respect of a pension credit member is a discretionary payment (regulation 2).
- 7.9 The 2014 Regulations are amended to:
- 7.9.1 clarify that the payment of a death grant to a beneficiary, in respect of both an ordinary member and a pension credit member, is a discretionary payment (regulation 3).

Consolidation

- 7.10 There are no plans to consolidate amendments to the 2010 and 2014 Regulations. The 2010 Regulations were mainly a consolidation exercise; the 2014 Regulations were

made less than four years ago and there have only been a few amendments to those Regulations.

8. Consultation outcome

- 8.1 The Department consulted with the Teachers' Pensions Scheme Advisory Board (SAB) at a meeting on 15 November 2017. The SAB meetings are attended by all of the major member and employer representatives (including local authorities) and there was unanimous support for these amendments, with no objections received.
- 8.2 The details of the discussion are contained in the meeting minutes that are published on the Teachers' Pensions website, to be accessed by any interested party - www.teacherspensions.co.uk/public/governance/scheme-advisory-board/board-meetings.aspx.

9. Guidance

- 9.1 These amendments are technical ones, made to provide clarity and do not change the ongoing policy intention. Guidance in relation to members who may be affected will be made available on the Teachers' Pensions website. The website is supported by ongoing digital communications to both members and employers. The website can be accessed at www.teacherspensions.co.uk.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 HMRC raised this issue and have worked with the Department. A delay in making these amendments will result in HMRC collecting inheritance tax in applicable cases and having to process refunds after the amendments are made. Making this change now reduces the potential administrative burden on HMRC.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 A review clause is not included as these amendments to the existing Regulations do not affect the way death grant applications are treated in practice or the policy, and which are in any event matters for the TPS administrator and the Department; the burden on the employer will not increase as a result of these amending Regulations.

13. Contact

- 13.1 Kevin Connolly at the Department for Education can answer any queries regarding the instrument - Tel: 01325 340679 or email: Kevin.Connolly@education.gov.uk.