

EXPLANATORY MEMORANDUM TO
THE TEACHERS' PENSIONS SCHEMES (AMENDMENT) (EU EXIT)
REGULATIONS 2019

2019 No. 502

1. Introduction

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

2. Purpose of the instrument

- 2.1 These Regulations are made to amend pension arrangements for teachers that are no longer appropriate as a result of the UK leaving the EU in the event of no deal. If the SI is no longer required on exit day, we expect to defer until the end of any agreed implementation period. These Regulations relate to the participation of schools located in EU member states and belonging to the Council of British International Schools (COBIS), and teachers employed by those schools, in the England and Wales Teachers' Pension Scheme (TPS).

Explanations

What did any relevant EU law do before exit day?

- 2.2 Schools which are members of COBIS and located in an EU member state have been eligible to join the TPS if in addition they make a successful application to become an 'accepted school'. Teachers working at COBIS schools that are accepted schools are able to accrue pension in the TPS.
- 2.3 The Teachers' Pensions Regulations 2010 (the 2010 Regulations) and the Teachers' Pension Scheme Regulations 2014 (the 2014 Regulations) govern the TPS. The 2010 and 2014 Regulations both provide for the recognition of employment at a COBIS school located in an EU member state if that school is an accepted school. Under both sets of regulations, this means that employment in a COBIS school (with accepted school status) located in an EU member state enables the teacher to accrue pension within the TPS.

Why is it being changed?

- 2.4 Part of the justification for granting COBIS schools located in an EU member state access to the TPS was that it allowed teachers to move freely between the UK and the EU, allowing them to maintain one pension scheme. When the UK ceases to be a member of the EU there is no longer any justification for allowing new teachers to accrue pension in the TPS during their employment at a COBIS school located in an EU member state. There is also no longer a justification for allowing any new COBIS school located in an EU member state to join the TPS.
- 2.5 The 2010 Regulations and the 2014 Regulations are being amended using powers conferred by the European Union (Withdrawal) Act 2018.

What will it now do?

- 2.6 COBIS schools that were accepted immediately before exit day remain accepted schools and can continue to participate in the TPS. No further COBIS school may participate in the TPS. Employment at a COBIS school in an EU member state will no longer accrue pension for the purposes of the 2010 or 2014 Regulations. This means teachers who take up employment at a COBIS school that was not accepted immediately before exit day will not be able to accrue pension in the TPS as a result of that employment. They may be able to make other pension arrangements locally.
- 2.7 Teachers who have made contributions to the TPS whilst working at an accepted COBIS school in an EU member state before exit day are eligible to continue to accrue pension in the TPS in the future as long as they continue to work for a COBIS school that was accepted immediately before exit day. This applies to teachers in such schools who were active members at exit day and those who were deferred members at exit day.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The instrument was laid in draft with the ‘proposed negative’ sifting committees on 12 February 2019. On 28 February 2019 it was confirmed that the sifting committees agreed with the recommendation that the negative procedure is appropriate for this instrument.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The legislative context surrounding the TPS is set out in section 7.
- 6.2 The UK will leave the EU on 29 March 2019. Section 8(1) of the European Union (Withdrawal) Act 2018 provides that a Minister of the Crown may, by regulations, make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU.
- 6.3 The provisions in the TPS allow participation in the TPS by teachers who move from England and Wales to work in COBIS schools located in EU member states. Part of the justification for granting COBIS schools located in EU member states access to

the TPS was that it allowed teachers to move freely between the UK and the EU, allowing them to maintain one pension scheme. The Department considers that this participation should end.

- 6.4 This instrument makes changes to the 2010 and 2014 Regulations in exercise of the power contained in section 8(1), with particular reference to the deficiency arising in section 8(2)(d), because the TPS scheme makes provision for, or in connection with, arrangements dependent upon the UK's membership of the EU which are no longer appropriate.
- 6.5 This instrument also uses the power in paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018 to make a savings provision consequential on the changes made under section 8(1).

7. Policy background

What is being done and why?

- 7.1 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, both provided for under the 2010 Regulations, which derive from 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.
- 7.2 The third section is a career average pension provided for under the 2014 Regulations, which derives from the Public Service Pensions Act 2013.
- 7.3 In order for a teacher to join the TPS and accrue pension in the TPS, the educational establishment must be eligible to participate. Since 2004, schools which are a member of COBIS and are located in an EU member state (other than the United Kingdom) have been allowed to become accepted schools in the TPS where they have applied to join, and fulfilled the necessary conditions. This provision was offered to make pension arrangements easier for those teachers wishing to move from schools in England and Wales to COBIS schools located in EU member states in accordance with the principle of free movement. Teachers at those accepted COBIS schools can join the TPS where their employer consents to it. The most recent information, from November 2018, showed that there are twenty-five such members in the TPS, across four COBIS schools in the EU.
- 7.4 There are a number of policy considerations behind this change to limit participation to current members. The UK is to leave the EU on 29 March 2019. International schools outside of the EU are not eligible to join the TPS and when the UK is no longer a member of the EU, there is no reason to treat schools located in the EU differently from other international schools. When the UK is no longer a member of the EU there is a risk that payment of employer and/or employee contributions could not be easily enforced if they were not paid on time by the schools, and non-payment will be more difficult and expensive to pursue outside of England and Wales. The TPS is funded by member and employer contributions, with the scheme underwritten by the Exchequer.
- 7.5 The 2010 Regulations are amended to revoke the provisions that provide that COBIS schools located in the EU may apply to become accepted schools, and allow teachers at those schools to join the TPS with their employer's consent. The effect is that those schools and non-participating teachers, as well as any new teachers, that are employed

by such schools are not eligible to join the TPS after exit day (regulation 2). Regulation 2 also removes COBIS from the glossary of expressions in the 2010 Regulations as it will no longer be required.

- 7.6 A saving is applied to regulation 2 in respect of a teacher who, before exit day, had made contributions to the TPS whilst working at a COBIS school in an EU member state (regulation 4). The effect of the saving is that the amendments made by regulation 2 of these Regulations do not apply. Those teachers may continue to accrue pension when employed at one of the four accepted COBIS schools. This includes teachers who are not active members on exit day itself – e.g. due to taking a career break.
- 7.7 Regulation 3 makes corresponding amendments to the 2014 Regulations.
- 7.8 Regulation 5 makes corresponding saving provisions in respect of teachers in the scheme covered by the 2014 Regulations and who had previously made contributions to the TPS whilst working at a COBIS school in an EU member state.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument relies on the provisions in section 8(2)(d), described in 6.4 above. This instrument is also made under paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018. In accordance with the requirements of that Act, the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 There are currently no plans to consolidate the relevant legislation.

10. Consultation outcome

- 10.1 Statutory instruments made under the powers in the European Union (Withdrawal) Act 2018 do not specifically require consultation. However a targeted consultation was held with the COBIS association, the four participating EU COBIS schools and the non-participating EU COBIS schools, in which DfE officials wrote to set out the proposed changes and to request comments.
- 10.2 Two responses were received from COBIS schools that participate in the TPS. Both respondents welcomed the continuing participation for those members already in the scheme but neither had enrolled new members for a number of years due to scheme costs. One of the respondents suggested there should be portability arrangements for teachers who are active members of the TPS moving between British schools elsewhere in the world. However as the only eligible schools outside of England and Wales are COBIS schools located in the EU, this comment does not directly relate to this change.

11. Guidance

- 11.1 No further guidance is being published alongside this instrument. This instrument applies to a small number of schools and appropriate information will be provided directly to those schools and to the scheme administrator.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument due to the very limited number of schools and teachers at COBIS schools in the EU, as set out in 7.3.

13. Regulating small business

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

14. Monitoring & review

- 14.1 Monitoring will be carried out by the scheme administrator to ensure that arrangements are working as anticipated. It is expected that any other issues would be raised by COBIS, although none are anticipated.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Kevin Connolly at the Department for Education Telephone: 01325 340679 or email: Kevin.Connolly@education.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Stephen Baker at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Nick Gibb, Minister of State for School Standards at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/ESIC
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s.2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement

- 1.1 The Minister of State for School Standards, Rt. Hon Nick Gibb, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Teachers’ Pensions Schemes (Amendment) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 The instrument does not fall within the categories for which use of the affirmative procedure is required under the European Union (Withdrawal) Act 2018.
- 1.3 The SI makes minor changes to the TPS to prevent new COBIS schools/teachers located in the EU from joining the scheme. There are only 25 active members of the TPS at COBIS schools, and those members are able to continue participation. Consultation with the participating COBIS schools confirmed that very few new members have been enrolled in recent years. The changes are not legally complex.

2. Appropriateness statement

- 2.1 The Minister of State for School Standards, Rt. Hon Nick Gibb, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Teachers’ Pensions Schemes (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate”.

- 2.2 This is the case because changes made to the TPS regulations are minor and only concern the participation of COBIS schools and teachers located in the EU. No other participants are affected by this change.

3. Good reasons

- 3.1 The Minister of State for School Standards, Rt. Hon Nick Gibb, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 As explained in sections 7.3-7.4 of the Explanatory Memorandum, COBIS schools located in the EU were allowed to participate in the TPS partly due to free movement principles. Once the UK has left the EU that justification will no longer apply.

4. Equalities

- 4.1 The Minister of State for School Standards, Rt. Hon Nick Gibb, has made the following statement:

“The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

- 4.2 The Minister of State for School Standards, Rt. Hon Nick Gibb, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Nick Gibb have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.