

EXPLANATORY MEMORANDUM TO

THE TEACHERS' PENSIONS SCHEMES (AMENDMENT) REGULATIONS 2019

2019 No. 1134

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 The instrument amends four statutory instruments relating to the Teachers' Pension Scheme (TPS).
- 2.2 Key changes implemented by this instrument include:
 - Providing civil partners and same-sex spouses with the same survivor pension benefits as widows;
 - Removal of the requirement to nominate unmarried cohabiting partners for survivor benefits; and
 - Miscellaneous and consequential amendments to scheme rules to provide clarification where ambiguity exists and to ensure scheme 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), which provides access to premature retirement benefits for members of the TPS - please see the 3rd report of the Joint Committee published on 11 September 2015 (<http://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 for Education (the Department) provided on 20 July 2015, the Department stated that it would make an appropriate amendment to those regulations at the next available opportunity.
- 3.3 The Department is using this instrument to make the necessary amendment to remove the redundant clause identified.

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)

- 3.4 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.

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 TPS is governed by the Teachers' Pensions Regulations 2010 (the 2010 Regulations) which concern final salary schemes with normal pension ages of 60 (NPA60) and 65 (NPA65), and the Teachers' Pension Scheme Regulations 2014 (the 2014 Regulations) which provide for a career average scheme.
- 6.2 Amendments are made to the 2010 Regulations as a result of the Supreme Court judgment in *Walker v. Innospec Ltd* [2017] UKSC 47. The case related to discrimination on the grounds of sexual orientation due to differences in accrued surviving partner benefits between opposite-sex married couples and (same-sex) civil partners. The implication of this judgment for pension schemes such as the TPS is that survivors of civil partnerships or same-sex marriages should be provided with benefits equal to those provided to an opposite-sex surviving spouse. In the TPS, all eligible surviving partners in a civil partnership or same-sex marriage are currently provided with benefits equivalent to widowers. A widowers' pension is based on all pensionable service of the member after 06 April 1988.
- 6.3 The Government has decided that all public service pension schemes should implement changes to provide that survivors of registered civil partnerships and same-sex marriages will be provided with benefits that replicate those provided to widows. A widows' pension is based on all pensionable service of the member after 01 April 1972.
- 6.4 The TPS final salary scheme rules are therefore amended to provide the same survivors' benefits for same-sex couples, whether married or in a civil partnership, as those for widows.
- 6.5 Amendments are made to the 2010 Regulations and 2014 Regulations as a result of the Supreme Court judgment in *Brewster v Northern Ireland Local Government Officers' Superannuation Committee* [2017] UKSC 8. The case related to the requirement for a nomination form to have been completed in order for an unmarried partner to be entitled to survivor benefits. The court dis-applied the nomination requirement as it was found to add nothing to the objective inquiry as to whether the unmarried partner satisfies the other qualifying conditions, and therefore caused less favourable treatment on the basis of unmarried status when compared with married couples or those in a civil partnership, neither of which are subject to a nomination requirement. The TPS final salary and career average scheme rules are therefore amended to remove the nomination form requirement in unmarried partner cases and to update references to nominated partners to qualifying partners.
- 6.6 Other changes are made to the 2010 and 2014 regulations to provide clarification on the longstanding policy intention, or to make minor corrections.

- 6.7 The Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994 (the AVC Regulations) and the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 2015 (the PRC Regulations) relate to the TPS.
- 6.8 Amendments to the AVC Regulations, which provide for additional pension benefits, are required in relation to the Brewster judgment to remove the nomination requirement for a surviving beneficiary of an AVC contributor. Other minor amendments are made to clarify policy intention.
- 6.9 An amendment to the PRC Regulations is required further to the issue referred to in section 3 of this Explanatory Memorandum to remove a redundant clause. Other minor amendments are made to confirm the longstanding policy intention.
- 6.10 As this instrument includes some correcting provisions as well as a number of new provisions, the Department has complied with the requirement of paragraph 4.7.6 of Statutory Instrument Practice to consult with the SI Registrar over the free issue procedure. The Department is not following the free use procedure in relation to this instrument as the proportion of correcting material is trivial and the Department therefore feels it would be disproportionate to do so.

7. Policy background

Entitlement for surviving civil partners and same-sex spouses

- 7.1 The 2010 Regulations are amended with retrospective effect and apply to civil partnerships formed after 5 December 2005 (the date civil partnerships were introduced) and to same-sex marriages that took place following their introduction on 13 March 2014.
- 7.2 Amendments provide for a surviving civil partner or a surviving same-sex spouse to receive a pension calculated in the same way as those provided to widows, rather than based on the member's pensionable service from 06 April 1988. Regulation 6 omits two definitions of same-sex couples that no longer apply. Regulation 16(b) changes the period of non-qualifying service for which a member may elect to pay family benefit contributions. Regulations 18(a) to 18(c) change the applicable period of adult benefit qualification service and amending regulations 19(a) to 19(d) change the relevant period of family benefit service.
- 7.3 Regulations 34(2) and 34(3) are in respect of members who entered a civil partnership and died prior to 01 September 2010, the date that the 2010 Regulations came into force. The amendments ensure that the appropriate corresponding regulation will apply under the transitional arrangements in Schedule 13 to the 2010 Regulations.
- 7.4 No amendments are required in respect of the 2014 Regulations as the career average section of the TPS already has the same survivor benefit provisions for male and female same-sex couples as would apply in an opposite-sex marriage.

Removal of requirement to nominate unmarried partners for survivor benefits

- 7.5 The 2010 Regulations are amended to remove the requirement for a nomination form to have been completed in order for an unmarried partner to be eligible to receive a survivor's pension in the event of the death of a member.
- 7.6 Regulation 9 removes the requirement for a nomination to have been made. Regulations 7, 10, 11, 12, 13, 15, 16, 18(c), 18(d) and 19(e) update references to a surviving nominated partner to refer to a surviving qualifying partner.

- 7.7 Regulation 34 (1) is in respect of members who had a partner who met the remaining qualifying criteria where the member died between the introduction of unmarried partner benefits on 01 January 2007 and 01 September 2010, the date that the 2010 Regulations came into force. The amendment ensures that the appropriate corresponding regulation will apply under the transitional arrangements in Schedule 13 to the 2010 Regulations.
- 7.8 Equivalent changes are made to the 2014 Regulations by regulations 21, 23, 24, 25, 27 and 29(b). The amendments are made with retrospective effect to when those regulations came into force on 01 April 2015.
- 7.9 Amendments are made to the AVC Regulations, which provide for additional pension benefits outside of the main scheme, to remove the nomination requirement for unmarried partners. Regulations 3(a), 3(c) and 3(d) make amendments to achieve the same outcome as the amendments to the 2010 Regulations.

Miscellaneous amendments

- 7.10 Regulation 8 inserts a new regulation into the 2010 Regulations to clarify that members have the option to elect for any death grant payment to be paid as a Pension Protection Lump Sum Death Benefit. In some circumstances this may be in the interests of a beneficiary as the death grant would not be calculated against the member's lifetime allowance for tax purposes. Regulation 26 makes an equivalent amendment to the 2014 Regulations.
- 7.11 Regulation 17(b) clarifies the longstanding policy intention in the 2010 Regulations that medical evidence provided in support of an ill-health retirement application should be recent. The amendment requires that the medical report that demonstrates a member's eligibility is dated within 18 months of when the application is made. Regulation 22 makes an equivalent change to the 2014 Regulations.
- 7.12 Regulation 14 adds the Jewish Schools Network to the list of establishments that are eligible to participate in the TPS. Employees who meet the definition of an organiser will be able to accrue pension in the TPS, where they have their employer's consent. Regulation 28 makes an equivalent change to the 2014 Regulations.

Other minor amendments

- 7.13 Regulation 17(a) changes the 2010 Regulations to revise and extend the list of circumstances in which an application for ill-health retirement can be accepted on the more generous in-service terms and therefore aligns with the 2014 Regulations.
- 7.14 Regulation 18(d)(iii)(aa) updates a reference in the 2010 Regulations to 'adult pension qualification service'.
- 7.15 Regulation 29(a) provides clarification that the definition of 'post benefit service' in the 2014 Regulations includes members who have taken benefits from the final salary scheme. The amendment confirms that members who have taken final salary benefits who then join the career average scheme should be treated as re-employed rather than as a new member.
- 7.16 Regulation 31(a) corrects a reference to a redundant clause in the definition of "appropriate person" in the PRC Regulations that was identified by the Joint Committee on Statutory Instruments, as referred to in paragraph 3.1.

- 7.17 Regulations 31(b) and 31(c) update the regulations which contain the appropriate definitions of ‘compensating authority’ and ‘deciding authority’ in the PRC Regulations.
- 7.18 Regulation 32 amends the PRC Regulations to provide the necessary authority from the scheme manager to allow a third party to administer and manage the TPS, to satisfy the requirements of the Public Service Pensions Act 2013.
- 7.19 Regulation 33 amends the PRC Regulations to provide a correction to the interpretation of the value of the long term rate of compensation on death that the beneficiary of a credited member, in the NPA65 or career average section of the TPS, is entitled to. The long term rate is 37.5% of the rate of discretionary compensation that was being paid to the member before their death.
- 7.20 Regulation 3(b) updates the definition of ‘eligible child’ in the AVC Regulations.
- 7.21 Regulation 4(a) reinstates a provision in the AVC Regulations for the early payment of AVC benefits on ill-health grounds which was inadvertently removed by an earlier amendment.
- 7.22 Regulation 4(b) updates a reference in the AVC Regulations to the section of the Registered Pension Schemes (Authorised Payments) Regulations 2009 that allows a small amount of remaining pension to be extinguished by a ‘small pot’ payment.

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

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 There are no imminent plans to consolidate amendments to the 2010 and 2014 Regulations. The 2010 Regulations were mainly a consolidation exercise; the 2014 Regulations came into force in 2015 and there have not been many amendments to those Regulations. The Department will continue to review and will consolidate regulations at the appropriate time.

10. Consultation outcome

- 10.1 The proposals and draft SI were published for consultation on 15 May 2019. The consultation closed on 25 June 2019. 28 responses were received, the majority of which were from individuals. Responses were also received from member and employer representatives.
- 10.2 All respondents welcomed the equalisation of same-sex survivor benefits with those payable to widows and the removal of the nomination form requirement for an unmarried partner to be eligible to receive a survivor’s pension.
- 10.3 Several respondents stated that whilst they understood this consultation was about the TPS providing equal provision of survivor benefits to those in a same-sex relationship as those provided in an opposite-sex relationship, they felt it was appropriate to comment on what they feel is the continued unequal treatment of male survivors of opposite-sex marriages. The consultation response document makes clear that this is a separate area of consideration for the Government.

10.4 Where respondents commented on the other provisions set out in the consultation they were either supportive of the changes or did not object to the changes.

10.5 The full consultation response document has been published on www.gov.uk.

11. Guidance

11.1 Guidance on these amendments will be available on the Teachers' Pensions website. Resources on the site include factsheets, videos, calculators and modellers. The website is supported by ongoing digital communications to both members and employers and through direct engagement with employers through the provision of training resources. Members and employers are informed of relevant updates through a series of email campaigns and by working with key partners. The website can be accessed at www.teacherspensions.co.uk.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 The impact on the public sector is minimal.

12.3 An Impact Assessment has not been prepared for this instrument because of the limited costs associated, which have already been factored into the valuation of the TPS, and the fact that those costs arise from judgements of the Supreme Court which must be implemented.

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 expected. It is anticipated that any other issues would be raised by the Teachers' Pensions Scheme Advisory Board, which meets every term and is made up of a number of representatives of employer and member organisations relevant to the TPS.

14.2 The regulation does not include a statutory review clause pursuant to the Small Business, Enterprise and Employment Act 2015, as it is considered that the exempting provision of section 29 (3) of that Act applies.

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, Deputy Director for School Employment and Teacher Retention 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.