

EXPLANATORY MEMORANDUM TO
THE TEACHERS' PENSIONS SCHEMES (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2017

2017 No. 1084

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 a number of 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 these amendments is to provide clarification where ambiguity exists and to ensure the Regulations provide for the policy intention.
- 2.3 Further, these amendments will ensure equal treatment, in relation to the conditions required to qualify for ill-health benefits, between those in the final salary scheme and those in the career average scheme.

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 This instrument, which is the first instrument relating to the TPS that has been made since the making of the PRC 2015, does not amend those Regulations for the following reason. HM Treasury is continuing to develop policy regarding changes to 'exit payments', the payments made to public sector employees who leave employment on a voluntary or compulsory redundancy basis, which will affect the way the PRC Regulations will operate for public sector schemes. Once that consultation is complete and HM Treasury has confirmed the policy, this Department will be required to make further changes to the PRC 2015. When making those changes, the Department will include the amendment promised in its memorandum so that all necessary changes to the PRC 2015 are made in one instrument rather than spread over two. It is expected that HM Treasury Regulations regarding public sector exit payments will be made in late 2017.

Other matters of interest to the House of Commons

- 3.4 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 Regulations are being amended to bring the final salary scheme in line with the policy intention, that to be eligible for ill-health benefits a member does not necessarily need to have demonstrated permanent incapacity at the time they left pensionable service. Other amendments are required to the arrangements for serious ill-health commutation, as well as technical changes, to ensure that the policy intention is provided for. The amendments also ensure that the 2010 and 2014 Regulations take the same approach, where appropriate.
- 4.2 The 2014 Regulations are being amended to make similar changes to the career average scheme and to provide clarification on some points of policy.

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 Teachers' Pensions Regulations 2010, 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 Teachers' Pension Scheme Regulations 2014, which derives from the Public Service Pensions Act 2013. The career average section provides for a normal pension age which is equal to the member's state pension age.
- 7.3 As part of the reform of public sector pension schemes based on the recommendations made by Lord Hutton in 2011, this Department reviewed some of the policies that provide for benefits to members. Those policies were consulted on and implemented through the 2014 Regulations and amendments to the 2010 Regulations, for those remaining in the final salary sections.
- 7.4 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 where the current drafting is ambiguous.

- 7.5 The 2010 Regulations are amended to:
- 7.5.1 change the period of a member's pensionable earnings that is relevant for the purposes of an application for phased retirement from 6 months to 12 months (regulations 3 and 4). As phased retirement requires a reduction in pensionable earnings of at least 20%, this amendment will ensure those in part time and irregular employment are not disadvantaged by when a period of unpaid leave falls, as a full year's earnings will be taken into account;
 - 7.5.2 provide that a death grant is not paid to the surviving beneficiaries of a TPS member if that member requested a serious ill health commutation and the application was granted by the Secretary of State before they died. An amount equal to the value of the serious ill health commutation is paid to a person who was nominated by the member or, where there is no such nomination, to the member's estate. This ensures that TPS benefits are paid in accordance with the member's last wishes (regulations 5, 6 and 7);
 - 7.5.3 provide that an applicant for ill-health retirement benefits does not have to have demonstrated permanent incapacity at the date of leaving employment, they only need to demonstrate permanent incapacity when making their application. This provides for situations where the member was suffering from a condition that required them to leave their employment, but the condition had not been diagnosed at that time. It also clarifies that the illness or injury relied upon in the application for ill-health benefits must be related to the reason for the member leaving work (regulation 7). This will bring the 2010 Regulations in line with the policy established as part of overall scheme reform in April 2015 and ensure all members are treated equally for ill-health retirement purpose;
 - 7.5.4 clarify that an early retirement application from a member who is out of service is voided if they return to eligible employment before the entitlement day specified in their application (regulation 7).
- 7.6 The 2014 Regulations are amended to:
- 7.6.1 clarify that where an actuarial adjustment is applied to increase the pension of a member who accrued pension beyond their normal pension age, the adjustment only applies to service up to normal pension age (regulation 9). There is no actuarial adjustment applied to pensionable service accrued beyond normal pension age;
 - 7.6.2 change the period of a member's pensionable earnings that is relevant for an application for phased retirement from 6 months to 12 months (regulations 10 to 13). This amendment ensures a consistent approach with the 2010 Regulations and is made for the same reasons;
 - 7.6.3 provide that an early retirement application by a member who is out of service is voided if they return to eligible employment before the entitlement date specified in their application (regulation 14);
 - 7.6.4 clarify that the illness or injury which is relied upon in an ill-health benefits application must be the same illness or injury, or connected to, the illness or injury which was the reason for the member leaving service (regulation 15);
 - 7.6.5 provide that a death grant is not paid to the surviving beneficiaries of a TPS member if that member requested a serious ill health commutation and the application was granted by the Secretary of State before they died. An amount equal to the value of the serious ill health commutation is paid to a person who was nominated by the

member or, where there is no such nomination, to the member's estate. This ensures that TPS benefits are paid in accordance with the member's last wishes (regulations 16 to 18);

- 7.6.6 Regulation 19 corrects a minor error by substituting a reference to "scheme manager" for "scheme employer" in paragraph 8 of Schedule 1 to the 2014 Regulations.

Consolidation

- 7.7 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 only made two years ago and there have only been a few amendments to those Regulations.

8. Consultation outcome

- 8.1 The Department ran a consultation from 29 July 2016 to 16 September 2016 which incorporated the amendments mentioned above to the 2014 Regulations and 2010 Regulations. In total 4 responses were received. These included responses from teacher unions and one independent stakeholder.
- 8.2 Three of the respondents supported all the proposed amendments. The fourth respondent, while supporting the proposals, suggested an alternative approach to the operation of serious ill-health commutation. The suggestion was based on the fact that, in some circumstances, the value of serious ill-health commutation may be less than the value of a death grant. Effectively, where a member commutes their pension their beneficiaries are no longer eligible for a death grant, although their beneficiaries will remain eligible for survivor benefits.
- 8.3 A death grant, where a member dies while in pensionable service, is calculated as three times the member's full-time equivalent salary. A commuted serious ill-health pension is calculated as £12 for every £1 of pension for the first 25% of the pension value, then £5 for every £1 thereafter. The value of these benefits therefore depends on the member's salary and service. The value of a commuted pension for a member with a lot of service and low/medium salary may be of greater value than a death grant. The value of a death grant, where a member has little service and a high salary, may exceed that of a commuted pension.
- 8.4 This Department considers that the decision on how benefits should be paid rests with the member. The amendment will ensure that all eligible members will have access to sufficient information at the time of making this decision to ensure they are fully informed about their options. Details of the estimated value of both commutation and a death grant will be made available to any member who requests it.
- 8.5 The full consultation response can be accessed at www.gov.uk/government/publications?publication_filter_option=consultations

9. Guidance

- 9.1 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 on-going 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 the resources available to

them through a series of email campaigns and through working with key partners. The website can be accessed at <https://www.teacherspensions.co.uk>.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to small businesses.

12. Monitoring & review

- 12.1 A review clause is not included as these amendments to the existing Regulations affect the way applications are treated which will be a matter 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 John Brown at the Department for Education can answer any queries regarding the instrument - Tel: 01325 340455 or email: john.brown@education.gov.uk.