



Department  
for Education

# **Teachers' Pension Scheme: independent schools phased withdrawal**

**Government consultation response**

**November 2020**

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## Introduction

The Department for Education (DfE) published for consultation a proposal to amend the Teachers' Pension Scheme (TPS) rules so that independent schools in England and Wales could opt out of TPS participation for future teaching staff whilst allowing existing staff to remain as active members.

The proposal was developed in conjunction with the Independent Schools Council (ISC) and Independent School Bursars' Association (ISBA) in order to mitigate the financial risks for some independent schools as a result of increased employer pension contributions and the department's decision not to fund that sector for those increased costs.

The public consultation began on 9 September 2019 and ended on 3 November 2019. The consultation document outlining the proposal was published on the gov.uk website and consultation platform, with responses invited through the consultation platform or by email or post.

Key stakeholders were formally notified of the consultation. Prior to publication of the consultation document, the proposal 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.

The department requested comments and views on the proposal and whether the stated policy intention would be achieved.

# Phased Withdrawal Proposal

## Background

Following the most recent valuation of the TPS, carried out quadrennially by the Government Actuary's Department, it was determined that the employer contribution rate, paid by all participating employers, would increase from 1 September 2019.

Following notification of the increase, the ISC wrote to the department to express concerns raised by some independent schools they represent, that the increase would create financial difficulties and some would be unable to afford to remain in the TPS.

Whilst for most employers who fall within the scope of the TPS participation is mandatory, this is not the case for independent schools. The provisions of the TPS allow independent schools to apply to participate. If accepted, the school must enrol all eligible teaching staff into the TPS and when a new teacher commences employment they must also be enrolled. Any teacher may then choose to opt out if they do not wish to accrue pension in this way. An independent school is able to leave the TPS but, if it does, all teachers at that school can no longer participate and they will become deferred members under the current regulations.

Around half of independent schools participate in the TPS, with independent school teachers accounting for nearly 10% of the active membership. Any school that does not offer TPS membership to eligible staff must offer alternative pension provision.

## Proposal and rationale

The ISC and ISBA asked the department to consider amending the TPS rules with the intention of helping those independent schools that need it to manage the additional pension costs, while protecting teaching staff that are already participating in order to keep as many existing employees in the TPS as possible.

The phased withdrawal proposal would require an amendment to the TPS regulations so that participation of an independent school could be frozen, meaning that existing members in that school could remain in the TPS whilst in that employment, but teachers not in the TPS at the time that the school changed its status would not be enrolled.

The proposal was aimed at allowing some schools to remain in the TPS which would otherwise have left, with the knowledge that, over time, the costs would reduce through natural staff turnover. The alternative could be that an independent school chooses to cease all participation in the TPS, thereby affecting all of the active members. Allowing those schools to leave the TPS gradually also reduces the financial impact on the scheme of a number of schools leaving.

## Overall summary of responses received and the government's response

A total of 645 responses were received through the consultation platform and by email. The majority, around 90%, were from individuals. 54 responses were received on behalf of employers. There were responses from the following organisations:

- The Association of Governing Bodies of Independent Schools (AGBIS);
- The Association of School & College Leaders (ASCL);
- BDB Pitmans LLP;
- First Actuarial LLP
- The Girls' Schools Association (GSA);
- The Headmasters' and Headmistresses' Conference (HMC);
- Independent Schools' Bursars Association (ISBA);
- Independent Schools Council (ISC);
- Local Government Association (LGA);
- National Association of Headteachers (NAHT);
- National Association of Independent Schools and Non-Maintained Special Schools (NASS);
- The National Association of Schoolmasters Union of Women Teachers (NASUWT);
- National Education Union (NEU);
- Universities & Colleges Employers Association (UCEA);

## Main findings from the consultation

Many of the respondents expressed support for the proposal, due to concerns that their school may otherwise cease to participate in the TPS altogether. Other respondents expressed concerns that allowing the proposal would result in some schools leaving the TPS which may otherwise remain as full participants. Finally, a number of responses suggested alternative options that the government should consider.

The majority of respondents, 52% (336), were fully supportive of the phased withdrawal proposal, whilst a further 30% (196) of respondents supported the proposal but expressed views on alternative approaches. 18% (113) of respondents opposed the proposal. A summary of the responses to the questions, and the government response, are provided below.

## Management of financial pressures

The consultation document set out that the proposal was aimed at helping those independent schools in the TPS that need it to manage the increased employer costs. This would be achieved by allowing independent schools that opted for phased withdrawal to enrol new members of staff into an alternative pension scheme. Costs associated with the TPS would reduce over time through staff turnover. The consultation asked respondents if the proposal would achieve this aim.

## Consultation findings

Of those who responded to this question, the majority (58.9%) fully agreed that phased withdrawal could help independent schools to manage financial pressures. 18.4% partially agreed, whilst 22.7% disagreed that it would help independent schools to manage financial pressures associated with the increased employer pension costs.

Respondents in favour of the proposal suggested that those independent schools that have the income streams or reserves required to absorb the increased costs will retain their current status. For other schools that will be unable to pass on these costs to parents via fee increases, they will need to look at efficiency gains, other cost savings or consult on leaving the TPS. Some schools will not be able to afford the increase regardless of phased withdrawal and will have to leave outright, but for others the proposal could offer sufficient mitigation in respect of staffing costs of incoming teachers to allow the continuing participation of current staff.

Respondents who disagreed commented that the proposal would not make a significant difference to finances as the option only provides a medium to long-term impact due to the low rate of staff turnover in schools. Savings would not be immediately realised.

Another response argued that the overall budgetary pressure of the increased employer contribution rate would be significantly lower than the 7.2pp increase might suggest. This is because teacher salary costs on which the increase applies are only a part of a school's overall budget, with the increase not applying to some elements of teacher staff costs, non-teaching staff costs, accommodation and services etc.

Other views were that those who would be subject to lower pension contributions may demand more salary and therefore create a different cost pressure.

## Government response

Whilst it is clear that a number of respondents felt phased withdrawal would help independent schools to manage the cost pressures that they face, the impact of the increased TPS employer contributions will be less than 7.2pp of a school's total budget.

As savings against those increased costs will generally only be realised where there is staff turnover, it appears that the proposal would be likely to have limited financial impact for independent schools in the first year after introduction. However it would have increasing impact with each subsequent year. The department therefore concludes that, over time, the proposal would assist some independent schools in managing the financial impact of the increased employer contribution rate.

## Protection for independent school teachers currently participating in the TPS

Another aim of the proposal was to protect teachers whose independent school employer is considering leaving the TPS as a result of increased employer pension costs. Under current rules, an independent school has the right to leave, and if it does then all active members become deferred and would no longer accrue TPS benefits.

The proposal would allow current teachers at that school to remain in the TPS. The consultation asked respondents if the proposal would achieve this aim.

### Consultation findings

A significant majority, 69.4%, agreed that the phased withdrawal proposal would protect teachers currently participating in the TPS at an independent school, with a further 14.4% partially agreeing. 16.2% felt that the proposal does not afford much protection for those teachers.

Some respondents expressed concerns that phased withdrawal could result in more independent schools leaving the TPS than would be the case under current rules as it could appeal to independent schools that would not otherwise leave in order to save costs on future recruits, whilst avoiding industrial relations issues.

Several respondents commented that such an approach could be a stepping stone to leaving the TPS outright and could potentially lead to more independent schools leaving than might do so under current rules. There were additional concerns raised that phased withdrawal could set a precedent for other sectors such as Higher Education or Further Education.

Other respondents were of the view that phased withdrawal would only protect members whilst they remained in their current role and does not protect members who move to another school or take a career break. Some concerns were expressed that a contractual change, such as undertaking a new role within that school, or a merger, could lead to being transferred to an alternative pension scheme. It was also stated that staff moving between two schools that opted for phased withdrawal should be allowed to continue active membership of the TPS.

Finally there were concerns that the proposal could have a negative impact on recruitment and retention, and on ease of movement between independent schools and between the state and independent sectors.



## Government response

The department acknowledges that not all respondents agree that the proposal will meet the aim of retaining as many current members in the TPS as possible.

Under the terms of the proposal, it is intended to provide for re-enrolment of teachers into the TPS at a phased withdrawal school in the following circumstances;

- An opted-out teacher at that school if the opt-out was in place at the time that the school adopted phased withdrawal.
- An active member who was subject to a compulsory transfer to a successor body, for example following the merger of two schools.
- A member returning from non-pensionable family leave or non-pensionable sick leave of up to 5 years e.g. extended maternity leave.

A teacher moving from one phased withdrawal school to another phased withdrawal school, other than in respect of a compulsory transfer, would be taking up a new employment and would therefore not be re-enrolled into the TPS.

The TPS is a valuable incentive to the recruitment and retention of teachers and independent schools should consider the impact in this area when considering leaving the Scheme, on whatever basis. Whilst it is accepted that some schools which adopt phased withdrawal may ultimately leave the TPS altogether, if a school has the intention to leave they already have the right to do so.

The department does not believe that the same considerations in respect of independent schools would apply to other sectors where employers do not have the right to withdraw from the TPS. The department agreed to assess the phased withdrawal proposal in respect of independent schools because they have the option to leave, and it may be preferable for current members at an independent school if this was gradual, rather than immediate as would happen under current rules. The circumstances of independent schools are different from the other sectors participating in the TPS and therefore the consideration of how best to protect current members does not arise elsewhere.

The department believes that, overall, the phased withdrawal proposal is likely to result in more teachers at independent schools retaining TPS membership than if the proposal was not implemented.

## Alternative approaches to phased withdrawal

The consultation asked respondents if there were any alternatives to achieving the stated aims of the proposal.

### Consultation findings

There were a number of suggestions for the department to consider as an alternative to phased withdrawal. These covered the following:

- Guaranteeing a contribution period where the employer contribution rate won't rise, or provide employers with more notice of an increase;
- Maintaining the current employer contribution rate / maintain the current employer contribution rate with a lower accrual for members;
- Allow members to meet some of the increased costs;
- Offer a defined contribution scheme for independent schools;
- Offer more flexibility to employers including allowing partial accrual.

### Government response

Public service pension schemes, including the TPS, carry out regular valuation exercises to assess the value of liabilities and to calculate the required contribution rates to meet those liabilities. Valuations are scheduled to take place quadrennially and will generally result in the employer contribution rate being set for a period of four years.

The previous employer contribution rate was effective from 1 April 2015 and a revised rate was due to be implemented from 1 April 2019. As a result of the increase, and following discussions with key stakeholders, the department delayed implementation from 1 April 2019 to 1 September 2019 in order to allow TPS employers more time to prepare for the increase. As the employer contribution rate is set in accordance with the scheme liabilities, any further delay would have resulted in a bigger increase to the required employer rate given that the rate would be collected over a shorter period of time.

The implementation of the next review is due to take place on 1 April 2023.

The government recognises that pensions are an extremely valuable element of the pay and reward package offered to teachers. Independent schools are not obliged to participate in the TPS and they already have the flexibility to offer alternative pension schemes. Independent schools also have the flexibility to adjust the balance between pay and pension benefits. It is up to each independent school how they choose to remunerate their teachers.

## Other comments

Respondents were asked if there were any other comments regarding the proposal.

## Consultation findings

Several respondents commented that independent schools leaving the TPS will place an additional financial liability on remaining TPS employers, in respect of deferred and pensioner liabilities, and believe that liabilities should be met by the employers to which they relate. One respondent would welcome a review of membership arrangements to remove the financial risk of unmet liabilities falling to other TPS employers.

Another response commented that the additional employer costs affected not only independent schools and would like the government to consider other ways to reduce costs to all employers and employees. They also stated that with the alternative being independent schools leaving entirely, their preference is for phased withdrawal as they believe it will prevent an immediate impact on membership numbers and that this approach reduces the risk to remaining employers.

In addition the following were received in response to the proposal:

- Concerns that an exit charge will be applied to schools leaving the TPS in future;
- Concerns were expressed about benefits already accrued in the TPS;
- Comments that the TPS is unsustainable and needs to be made cheaper or will fold as there is a black hole in scheme finances, and that valuation methodology is not appropriate;
- A query as to whether phased withdrawal would apply to Non-Maintained Special Schools or Independent Special Schools.

## Government response

The government is committed to public service pensions that are fair to public sector staff as well as to the taxpayer and are sustainable and therefore uses an appropriate measure of costs. A full valuation of the TPS occurs every four years to check the current costs and to set the level of contributions that employers must pay in order to cover the liabilities. This process ensures that provision for costs and future funding by employers, members and taxpayers is kept up to date. The next valuation of the TPS is due to be implemented from April 2023.

The government has separately announced a review of the cost-cap mechanism ahead of the next valuation, which will check that cost control arrangements are working as intended and delivering the government's objectives.

Schools leaving the TPS can impact costs in several ways. The short-term impact is to reduce the pensionable payroll, meaning that higher deficit contributions would be required from remaining employers to pay off any deficit. The long-term impact is to reduce the liabilities calculated as part of future valuations.

The impact of phased withdrawal on the employer contribution rate would be to mitigate the upward pressure if independent schools would otherwise completely leave the TPS.

The TPS does not place an exit charge for outstanding liabilities on those employers leaving if there is a deficit. Should a change be considered in the future, all interested parties, including independent schools, would be consulted as required under legislation.

A number of responses expressed concern that accrued pension benefits would be lost if an independent school ceased TPS participation altogether. Although an active member would become a deferred member if this happened, and therefore accrue no further benefits in the TPS, benefits already accrued up to this point are protected and become payable from the member's normal pension age. An employee must also be offered an alternative pension scheme in respect of their ongoing employment.

Independent Special Schools are 'accepted schools' in the TPS regulations and therefore the same participation rules apply as with any other independent school in that they can apply to join the TPS and can also leave if they choose to. Whilst phased withdrawal would be available to Independent Special Schools, they are eligible for government funding for the increased employer contributions and therefore should not face the same TPS cost pressures.

Non-Maintained Special Schools are not 'accepted schools' and they are required to participate in the TPS. Phased withdrawal would therefore not apply to a Non-Maintained Special School. Government funding for the increased TPS costs has also been provided for these schools.

## Public Sector Equality Duty

The consultation document sets out the department's initial assessment of the equality impacts of the proposal and respondents were asked to highlight other issues identified.

### Consultation findings

The main equality concerns arising from the proposal relate to the characteristics of teachers who may join a school that has elected for phased withdrawal and teachers who are already employed at that school who are not active members.

A number of respondents identified that the proposal would affect newly qualified teachers and as they tend to be younger than the general teaching workforce, the proposal could disproportionately affect younger teachers.

One respondent also stated that there has previously been an overrepresentation of those identifying as White British in the teaching workforce compared to the overall population and they would remain as active members. If representation of those who are not White British is now increasing as might be expected, the phased withdrawal proposal could have a disproportionate effect on those teachers, if they are unable to join the TPS.

Some of those responses went on to say that there was justification in respect of a new teacher joining a school as they would be aware of the terms on which they were joining, and there could be flexibility with pay which may be preferred.

A number of respondents highlighted concerns in respect of those teachers who are already employed at a school but are not active members and may be unable to re-join the TPS. It was noted that younger members, in the 25-34 age category, are most likely to opt out and may therefore be disproportionately affected by phased withdrawal. One respondent commented that the likely impact of phased withdrawal is to lower the relative participation rate of younger members in the independent sector compared to other sectors, which directly contradicts government policy of encouraging people to make adequate provision for their own retirement.

Another highlighted issue was that those taking extended breaks leave pensionable service which could exclude current teachers from accruing any further benefits in the TPS. This could disproportionately affect female teachers as someone on maternity leave would cease to be in pensionable service if they no longer receive any contractual or statutory pay. Similarly those with a longstanding health condition could be affected by a prolonged period of sick absence. Some respondents proposed that in these situations, members should be guaranteed to be able to return to active participation within a timeframe of up to 5 years.

## Government response

To address the issues identified, and to ensure that the aims of the public sector equality duty are met, the proposed changes to TPS rules would include the following protections. Teachers who are opted out would have the option to re-join if the opt-out took place before their school adopted phased withdrawal. Teachers returning from non-pensionable sick leave or non-pensionable family leave would have the right to re-join the TPS for up to 5 years from their last day of pensionable service.

Whilst some potential outcomes outlined above could remain, particularly in respect of teachers taking up a new employment, the department considers that the proposal is justifiable on the basis that it is intended to reduce the number of independent schools leaving the TPS entirely. If the alternative to phased withdrawal was for an independent school to leave outright, then the effect on a future employee of a school opting for it would be exactly the same - they would not have access to the TPS and therefore would be in no different a position than under this proposal. Being enrolled into an alternative pension scheme would also not prevent a teacher being eligible to join the TPS if they subsequently took up a new employment at a participating school.

Any change to regulations would require careful drafting to ensure there were appropriate protections for some teachers already at a school that opted for phased withdrawal.

The department believes that, subject to further consideration of circumstances in which current teachers at a school that opted for phased withdrawal could re-join, there would be reasonable justification for allowing the proposal, on the basis that the alternative might be that an independent school leaves the TPS completely. In those circumstances, a new teacher would be enrolled into an alternative pension scheme and would therefore be in the same position as without phased withdrawal being introduced.

## **Government's overall response**

The department appreciates the work that respondents have put into considering and commenting on the issues involved.

The department has looked closely at the responses and also taken into account the further impact of COVID-19, and the resulting financial uncertainty around fee levels and numbers of pupils. After careful consideration it is intended to proceed with the change to allow phased withdrawal as outlined on page 9.

The TPS is a key factor in the recruitment and retention of teachers and this is likely to encourage independent schools to give full consideration to remaining as an active TPS employer where it is possible to do so. For those schools that cannot remain and would otherwise leave immediately, phased withdrawal will lessen the impact on current members.

## Next steps

The department will liaise with the ISC, as well as member and employer representatives, to fully develop this proposed change and draft regulations to allow phased withdrawal for independent schools. This will result in current teachers being able to continue participation in the TPS if their independent school employer decides to freeze participation in the TPS with new teachers being enrolled into an alternative pension scheme.

When drafting regulations further consideration will be given to the treatment of existing staff members who are, or might become, deferred during that employment. Draft regulations will be subject to consultation.

It is the intention that regulations will come into force in spring 2021 and independent schools will be able to request phased withdrawal from then.





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