

Teachers' Pension Scheme: proposed changes to scheme regulations

Government consultation response

March 2022

Contents

Introduction	3
Overall summary of responses received and the government's response	4
Main findings from the consultation	4
Background to the McCloud Remedy and consultation proposal	5
Draft Regulations	6
Amendments to TPS regulations	6
Amendments not considered to be necessary	6
Consultation findings	7
Government response	7
Other issues raised	10
LGPS Excess Service	10
Government response	10
Consultation Process	10
Government response	11
Valuation	11
Government response	12
Public Sector Equality Duty	13
Government's Overall Response	15
Next Steps	16

Introduction

1. The Teachers' Pension Scheme (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, with a normal pension age of 60 or 65, provided for by the Teachers' Pensions Regulations 2010 (SI 2010/990). The third is a career average section which covers the majority of TPS members, including any new teachers joining, provided for under the Teachers' Pension Scheme Regulations 2014 (SI 2014/512).
2. The Department for Education (the Department) published for consultation a draft statutory instrument proposing amendments to the regulations which set out the rules for the TPS.
3. The consultation was to gather views on changes to the TPS rules to deliver the first phase of the McCloud Remedy (see below) as would be required by the Public Services and Judicial Offices Act 2022. The changes would mean the closure of the final salary scheme to all remaining members of that section.
4. All members would therefore be in the new career average section of the TPS from 1 April 2022.
5. The draft regulations were subject to a public consultation which began on 30 November 2021 and ended on 24 January 2022 (8 weeks). A document describing the purpose and effect of the proposed regulations was published on the www.gov.uk website alongside the draft amendments, with responses invited through the consultation platform or by email or post.
6. Key stakeholders were notified of the consultation. Prior to publication of the consultation document, the proposals were discussed with the Teachers' Pension Scheme Advisory Board (SAB). This is a statutory board, comprising 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.
7. The Department requested comments and views on the draft regulations and whether they would achieve the stated policy aims.

Overall summary of responses received and the government's response

8. A total of 59 responses were received through the consultation platform and by email, the majority of which were from individuals (47). 12 responses were received from organisations which represent workers and employers in the education sector. Responses from organisations were received from:
- Association of School and College Leaders (ASCL)
 - Independent Schools' Bursars Association (ISBA)
 - Independent Schools Council (ISC)
 - Intergenerational Foundation
 - Local Government Association (LGA)
 - National Association of Head Teachers (NAHT)
 - National Association of Schoolmasters and Union of Women Teachers (NASUWT)
 - National Education Union (NEU)
 - Sheffield Hallam University
 - Undeb Cenedlaethol Athrawon Cymru (UCAC)
 - Voice Community
 - West Sussex County Council
9. Some respondents expressed views on topics which were outside of the scope of the consultation. This document sets out the Department's response to comments received on the changes that were subject to this consultation.

Main findings from the consultation

10. None of the respondents identified a scenario whereby a full protection member who would transition from the legacy scheme to the new scheme on 1 April 2022 could have entitlement to ill-health pension in the legacy scheme, if their application were instead to have been approved on 31 March 2022.
11. Nearly all respondents agreed that the draft amendments achieved the policy aims as described in the consultation document and did not identify any other changes to scheme regulations which would be needed to achieve the policy aims. Two minor amendments were proposed which are detailed later in this response.

Background to the McCloud Remedy and consultation proposal

12. When new public service pension schemes were introduced in 2015, transitional protection arrangements allowed older members to continue building pension in the existing legacy (final salary) schemes whilst younger members were moved into new (career average) schemes.
13. Following a successful legal challenge in the [McCloud](#) case, the Court of Appeal found that this difference in treatment in the transitional arrangements amounted to age discrimination. The government has therefore brought forward legislation in the form of the Public Services Pensions and Judicial Offices Act 2022 to implement changes to remedy the age discrimination that was identified. This legislation will implement the approach set out by the government in its [consultation response published in February 2021](#) on the main public service schemes for which the UK government is responsible, other than those for the judiciary and the Local Government Pension Scheme.
14. The remedy has two phases. First, to move all remaining active members of the legacy schemes (those with full protection) into the new schemes on 1 April 2022, which ensures equal treatment moving forward. This is the prospective part of the McCloud remedy (the prospective remedy) which was the subject of this consultation, as described in paragraph 5.
15. Second, to remove the discriminatory effect of the transitional arrangements by offering eligible members a choice over the set of benefits (legacy scheme or new scheme) they wish to receive for any remediable service during the remedy period of 1 April 2015 (when the discrimination arose) to 31 March 2022 - following which all members will be in the new scheme therefore ensuring equal treatment on an ongoing basis. That is the retrospective part of the McCloud remedy (the retrospective remedy).
16. The Department consulted on draft regulations making changes to the TPS rules which are necessary to implement the prospective phase of the McCloud remedy. The regulations are to close the legacy scheme to any further accrual on 31 March 2022. Remaining active members of the legacy scheme will move into the new scheme on 1 April 2022.
17. This consultation did not cover the second (retrospective) phase of the remedy, concerning the remediable service of affected members accrued in the TPS between 1 April 2015 and 31 March 2022. The Department will publish another consultation regarding this issue later this year and a further set of regulations will be made to deliver the retrospective remedy. Those regulations will come into force by 1 October 2023, at the latest.

Draft Regulations

Amendments to TPS regulations

18. As Schedule 3 to the Teachers' Pension Scheme Regulations 2014 (The 2014 Regulations) already provides transitional arrangements for members of the legacy scheme to move into the new scheme, a small number of amendments were proposed to this schedule to ensure that there can be no further accrual in the legacy scheme after 31 March 2022.
19. The proposed amendments were mainly concerned with closure of the legacy scheme to any further accrual after 31 March 2022 and to provide a new definition of transition date for a full protection member who has not taken a retirement pension under the legacy scheme. This effectively provides a full protection member of the legacy scheme with a date of transition to the new scheme of 1 April 2022.
20. Other draft amendments were proposed to the effect that transitional protection would only apply in respect of Fair Deal transfers that take place before 1 April 2022, transfer of legacy scheme service accrued after 1 April 2022 can be transferred into the TPS only where this is transferred from an unreformed public service scheme and to simplify regulations in respect of Additional Pension elections made in the legacy scheme prior to 1 April 2022.

Amendments not considered to be necessary

21. For an ill-health application that is made by an affected member on or before 31 March 2022 but is still to be decided on 1 April 2022, the intended government policy is that if the application is approved, members would receive an award paid from the new scheme that is no less generous than if the award had been determined on 31 March 2022 under legacy scheme rules. This would mean that such members receive a new scheme ill-health pension calculated at the date they actually retire, but that if a legacy scheme ill-health pension calculated as at 31 March 2022 would have been higher, the new scheme pension must be increased by the difference between the two.
22. As outlined in the consultation document the Department does not believe that there would be entitlement to ill-health pension in the TPS legacy scheme in the circumstances described. That is because there is no entitlement to ill-health pension if the member has reached their scheme normal pension age (NPA) and full protection members are those who were within 10 years of their NPA on 31 March 2012.

23. Consultation respondents were asked to consider if they could identify any scenarios where a full protection member who transitions to the new scheme on 1 April 2022 could benefit from an ill-health pension in the legacy scheme, if their application had instead been decided on 31 March 2022. This was to help the Department to determine if a further change to regulations could be needed.

Consultation findings

24. Most respondents who commented felt that the draft amendments achieve the stated policy aims although some, including the NEU and the NASUWT, didn't necessarily agree with the policy approach of closing the legacy scheme and also reiterated views expressed in the [Public Service Pensions Consultation](#) published in July 2020, such as that individual schemes should be given flexibility in the approach to the remedy including setting scheme specific normal pension ages.
25. The LGA suggested that the TPS regulations are amended to clarify that the member will cease to be a full protection member at the end of 31 March 2022, to make clear that it would not end at the beginning of that day.
26. No respondents identified the need for a further change to regulations to provide for the government's approach to the ill-health underpin where an ill-health application of a fully protected member was submitted before 31 March 2022 but had not been decided at the point they transition to the new scheme on 1 April 2022.
27. The NEU suggested consideration be given to an underpin with an ability to use discretion in the regulations in case there are scenarios which have not been foreseen.
28. The NASUWT response noted that there is the potential for fully protected members to have entitlement to an ill-health pension after transition on 1 April 2022 that they may not have prior to that, due to the higher NPA in the new scheme. The NASUWT are keen that this is communicated to this cohort of members and that potential applicants are advised to take regulated financial advice on the options available to them.
29. Other respondents commented that the member choice (under the retrospective remedy) should be available at the same time as the closure of the final salary scheme on 31 March 2022, that as teachers work in academic years rather than financial years then the date of the change should be September not April, and another commented that those full protection members still working after April 2022 should be able to continue to add to final salary pension until retirement.

Government response

30. Having considered all of the responses the Department is assured that further amendments in respect of an ill-health underpin are not required in relation to the first stage of the McCloud remedy. This is because full protection members will have

qualified for age benefits by 31 March 2022 and current rules already allow for an undecided ill-health application to be considered against the new scheme criteria (with the higher NPA) where a member has transitioned since making their ill-health application. The Department will consider whether any amendments are required in respect of an ill-health underpin when affected unprotected and tapered protection members have their remediable service 'rolled back' into the legacy scheme as part of the second phase of the McCloud remedy. Any proposed changes to TPS regulations will be included in the consultation on the second phase of the remedy.

31. The Department has considered the query about clarifying that full protection ceases at the end of 31 March 2022 rather than the beginning of that day and is satisfied that the original wording achieves the policy aim that full protection ceases at the end of 31 March 2022; in other words, 31 March 2022 is the last day of full protection. This is consistent with equivalent changes being made in other public service pension schemes affected by this issue.
32. The Department agrees that the impact of the closure of the legacy scheme will need to be carefully communicated to members. 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 including member and employer representatives. The website can be accessed at <https://www.teacherspensions.co.uk/members/scheme-changes/transitional-protection.aspx>. The scheme administrator has been contacting those full protection members who are directly affected by the amendments.
33. The Department acknowledges the views and concerns of individuals and organisations around the overall policy to close the final salary scheme. The proposed changes to the TPS regulations are required in order to deliver the first stage of the McCloud remedy, as set out in the government's consultation response which was published in February 2021 and provided for in the Public Service Pension and Judicial Offices Act 2022.
34. In that [response](#) the government highlighted its clear intention to ensure fairness in all public service pension schemes moving forward meaning that legacy schemes should close and future accrual would be in the new career average schemes.
35. The transitional protection provisions introduced when pension schemes were reformed in 2015 were intended to be limited in time providing protection to members within 10 to 13.5 years of their scheme NPA. That period of protection will have come to an end by 1 April 2022. The reformed schemes themselves are not discriminatory and are fairer for lower and middle earners. The government wants to ensure that all members are treated equally in respect of the scheme that is available to them after the discrimination identified in the McCloud judgment has been addressed.
36. In introducing the changes to The 2014 Regulations, the Department is not removing the right of full protection members to retire at their NPA in the legacy

scheme. Full protection members will have reached their legacy scheme NPA on or before 31 March 2022. As is the case with all benefits accrued in the legacy scheme, any member who chooses to work beyond their NPA after 1 April 2022 does not lose their legacy benefits and will begin to accrue benefits in the new scheme in accordance with the rules of that scheme.

37. Whilst accrual in the legacy schemes will end when those schemes are closed on 31 March 2022, any pension that has been accrued in that scheme up to 31 March 2022 is protected and payable in full from the scheme NPA. Although the reformed schemes are career average schemes, the 'final salary link' in the legacy schemes is also protected. This means that the amount of pension payable from the legacy scheme will be calculated in relation to a member's 'final salary' in the new scheme, at the point that the member retires or otherwise leaves the TPS.
38. The Department acknowledges the suggestion that as teachers work in academic years rather than financial years, the date of the change should be September 2022 and not April 2022. This issue affects many of the public service pension schemes not just the TPS and is therefore the reason why the change is not made with effect from September in accordance with the academic year.
39. The second part of the remedy, to provide affected members with a choice of benefits for service during the remedy period, is a complex policy issue which will be subject to further consultation later this year. It would not have been possible to have developed the policy, regulations and administrative arrangements in order for the member choice to be offered from 1 April 2022 and therefore separate regulations are being developed. Those regulations will contain new provisions including those that enable the scheme to:
 - Implement the deferred choice underpin which will offer eligible members a choice over the set of benefits (legacy scheme or new scheme) they wish to receive in respect of remediable service during the remedy period of 1 April 2015 to 31 March 2022 when pension benefits become payable.
 - Correct any overpayment or underpayment of pension benefits or member contributions already paid in relation to a member because of their choice.
 - Facilitate the payment of appropriate compensation to address financial loss arising from the discrimination or operation of the remedy, e.g. overpaid tax.
 - Provide information/calculations to members to enable them to make fully informed decisions about their pension.

Other issues raised

40. Other issues were raised within the consultation responses as follows.

LGPS Excess Service

41. The LGA expressed agreement with the approach being taken to those teachers with excess service contracts (additional part-time teaching contracts in addition to a full-time teaching contract). Their response went on to state that the option of full protection members transferring Local Government Pension Scheme (LGPS) service into the TPS after joining the new scheme on 1 April 2022 is subject to LGPS rules that allow transfers only if that member is more than 12 months from their LGPS NPA. Their response also queried if Club transfer rules are to be amended as current rules would not apply in this scenario.
42. The LGA made other helpful comments in respect of how teachers with excess service and their employers can be made aware of the changes that will apply to them from 1 April 2022. The LGA highlighted a risk of teachers being incorrectly kept in the LGPS when their service should be pensionable in the TPS, leading to the possibility of issues such as arrears of contributions for employers.

Government response

43. The Department welcomes the comments from the LGA in relation to the issue of excess service of full protection members who may have accrual in the LGPS scheme. The Department notes that the option for full protection members to transfer any LGPS service into the TPS will be subject to the rules of the LGPS scheme, including that transfers are only permitted where the member is more than 12 months from their LGPS NPA. The Department will continue to highlight these considerations in its communications with teachers.
44. The Club transfer mechanism in relation to teachers with excess service in the LGPS is not directly related to the proposed changes that were subject to this consultation, however the Department will give further consideration to this point.

Consultation Process

45. One member representative expressed dissatisfaction with the level of opportunity to respond to the consultation on such a critical matter, including that the consultation spanned the Christmas holidays.
46. An individual commented that the wording of the consultation implied that the decision had already been made to transition full protection members to the new scheme in April 2022. A further individual responded that the consultation provided insufficient notice of the change which would have a significant impact on pension savings and affected members would not have sufficient time to make necessary adjustments.

Government response

47. On 1 April 2022, those full protection members who are affected by the closure of the legacy scheme will have had more than 20 months' notice of the government's plans. The Department has sought to keep affected members and employers informed through various channels including a dedicated section on the Teachers' Pensions website, member and employer bulletins and engagement with stakeholders such as member representatives (trade unions).
48. The decision to close the legacy scheme to any further accrual has already been made by the government and confirmed in its separate consultation response published in February 2021. Therefore the purpose of this consultation was not to consult on that policy decision, but whether the draft amendments achieve the policy aims in relation to the closure on 31 March 2022, and transition to the new scheme of any remaining active members on 1 April 2022. As such the Department considers that an 8 week period was appropriate for this consultation as it followed on from the government's [full consultation](#) published in July 2020, and was discussed on several occasions with the Teachers' Pension Scheme Advisory Board, which is made up of TPS member and employer representatives.

Valuation

49. Some responses covered issues that were not directly related to this consultation. Several of the member representatives responded that whilst they generally agreed that the draft amendments achieved the stated policy aims, they do not agree with all aspects of the McCloud remedy.
50. Member representatives restated their opposition to the costs of the McCloud remedy being a member cost in the finalised 2016 scheme valuations. The NEU raised particular concerns with the position of those members who joined the TPS after 1 April 2012 and are not eligible for the remedy but will find the cost included in the cost sharing mechanism. The ASCL, NAHT and the NASUWT expressed similar views that the costs should be met by the government and not by members and employers of the schemes affected.
51. The ISC and ISBA conversely commented that in their view it is right that the McCloud remedy is included in the 2016 valuation results and they hope that this will mean that the next valuation - the 2020 valuation - will result in no more than a minimal increase in employer contributions. They believe that such an outcome would lead to remaining independent schools considering retaining the TPS for their teachers, but that a substantial increase to employer contributions from 2024 (when the 2020 valuation will take effect) would make the TPS unaffordable for those independent schools.
52. The Intergenerational Foundation commented that costs are too high and that those who join the TPS from April 2022 will be at a disadvantage when compared to their predecessors as those who are yet to join will have to contribute more, over a longer period, for less in retirement.

Government response

53. Further to the responses that commented on the government's decision to include the cost of the McCloud remedy in the cost control mechanism at the 2016 valuations, this matter was not in scope of the consultation. HMT published Amending Directions on 7 October 2021 which allowed the 2016 valuation results to be finalised. The results confirm that the cost control costs of the TPS at the 2016 valuation are 1.3% above the baseline level, which means that as they remain within the target range, no adjustments to benefits are needed. There are currently two judicial review applications against the inclusion of the costs of the remedy in the cost control mechanism at the 2016 valuations.

Public Sector Equality Duty

54. The Department's consultation document published in November 2021 explained the legal obligation of the Department to consider how its policy decisions impact differently on different people. When making decisions about policies, the Department must have due regard to the need to eliminate discrimination and to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
55. The document included an equality impact assessment setting out the Department's assessment of the equality impacts of the proposed amendments to the TPS regulations and respondents were asked to highlight any other issues that were identified. The Department has continued its ongoing consideration of any equality issues, including in respect of those comments made in the consultation responses, and is of the view that further amendments are not required.
56. Some respondents have expressed equality impact concerns relating to the closure of the final salary schemes in relation to age and are of the view that protected members of the scheme should be allowed to remain in the legacy scheme until retirement.
57. As is detailed in paragraphs 36 and 37 above, the Department is not removing the right of full protection members to retire at their NPA in the legacy scheme as full protection members will have reached their legacy scheme NPA on or before 31 March 2022. Whilst accrual in the legacy schemes will end on 31 March 2022, pension accrued in that scheme up to that date is protected and payable in full from the scheme NPA of that member. The final salary link is also protected when members transition to the new scheme.
58. Some respondents have expressed equality impact concerns relating to the closure of the final salary schemes in relation to sex, querying whether female members who work or have worked part time or taken career breaks could be detrimentally affected by the changes.
59. The policy as to future pension provision applies regardless of sex and age, so from 1 April 2022 those who remain in service will only be eligible to do so as members of the new scheme. The Department considers that equality between members will be enhanced as a result of the amendments which will ensure that all TPS members accrue pension in the same scheme from 1 April 2022.
60. Voice Community commented that whilst they were pleased to note that there had been exploratory work done towards investigating the equalities impact of these changes, they were disappointed by the absence of data on disability characteristics. As their response acknowledged, employers would not necessarily have full information regarding certain protected characteristics, if that is not disclosed by their employees. Furthermore, the scheme administrator does not routinely collect information relating to disabilities from employers as it is not needed for the administration of the scheme. Where necessary the Department will seek to use alternative sources of data to help with the equalities considerations of proposed changes to scheme rules.

61. The Department does not believe that there are any particular impacts relating to disability with the proposed amendments being made to TPS regulations.
62. The proposed changes will apply to all members regardless of disability. From 1 April 2022, all active members of the TPS will be in the new scheme and from that point will accrue future pension benefits on the same basis irrespective of any protected characteristics. Therefore, it is considered that any impact which is greater on one group compared to another, is justified.

Government's Overall Response

63. The Department appreciates the work that respondents have put into considering and commenting on the issues involved. The Department has looked closely at all of the comments raised and considers that the draft regulations should now form the basis of the final regulations.

Next Steps

64. The draft regulations will now form the basis of the final regulations. The aim is to complete work on these and make and lay them before Parliament in March 2022. The amendments will come into force on 1 April 2022.
65. The policy and implications will continue to be communicated to employers and members who may be affected.



Department
for Education

© Crown copyright 2022

This document/publication (not including logos) is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

To view this licence:

visit www.nationalarchives.gov.uk/doc/open-government-licence/version/3

email psi@nationalarchives.gsi.gov.uk

write to Information Policy Team, The National Archives, Kew, London, TW9 4DU

About this publication:

enquiries www.education.gov.uk/contactus

download www.gov.uk/government/consultations



Follow us on Twitter:
[@educationgovuk](https://twitter.com/educationgovuk)



Like us on Facebook:
facebook.com/educationgovuk