

Independent schools briefing, Quarter 4 2021

Phased withdrawal regulations now in force

On 8 July 2021, Government published its response to the consultation held on proposed draft amendments to the Teachers' Pension Scheme (TPS) rules, which aim to introduce phased withdrawal.

The Teachers' Pensions (Miscellaneous Provisions) (Amendment) Regulations 2021 came into force on 1 August 2021. The first schools to use these regulations did so during August, closing TPS to new teachers from 1 September 2021.

What is phased withdrawal?

Once the impact on employer costs arising from the 2016 TPS valuation was fully understood – and the Department for Education (DfE) decided not to fund the increased costs that independent schools faced – it was clear that many schools in the sector would struggle to pay the new contribution rate from 1 September 2019.

As a result, the DfE, in conjunction with the Independent Schools Council (ISC) and Independent School Bursars' Association (ISBA), put forward a proposal to amend the rules of the TPS. This would allow independent schools to opt out of TPS participation for future teaching staff, while allowing existing teaching staff to remain active members. A public consultation ran from 9 September 2019 to 3 November 2019 to explore this proposal.

Why was it needed?

When TPS costs increased materially on 1 September 2019, many independent schools felt that they would no longer be able to afford to stay in the TPS. The increase also highlighted the broader lack of control independent schools have over pension costs. Two years later, [271 independent schools had left the TPS](#), according to the latest freedom of

information request we've seen (dated 20 September 2021).

The problem facing independent schools was that if a school was accepted into the TPS, it had to offer membership to all eligible teaching staff. Independent schools were able to leave the TPS, but all teachers would become deferred pensioners.

The proposal from ISC and ISBA considered an intermediate option which would allow schools to provide a different pension to new teaching staff, while protecting current staff by keeping them in the TPS. Pension costs would then fall over time as a result of staff turnover (if costs for new staff were at a lower rate than applicable in the TPS). Even if costs were at the same level as current TPS contributions, schools would have more control over future costs for new staff. This could allow some schools to stay in the TPS that might otherwise have left.

Response to the first consultation

In November 2020, the Government published its response to the 2019 consultation, noting broad support for the proposal and noting that respondents were happy that existing teachers were protected but wanted further protection for certain teachers (for example, those who had opted out of TPS, were transferred from one school to another, or were on non-pensionable family leave or non-pensionable sick leave).

The Government agreed to liaise with the ISC to produce draft regulations allowing phased withdrawal (subject to consultation) and to further consider teacher protection. The intention was for the regulations to come into force in spring 2021.

Consultation 2 and implementation

Given everything that was happening at the end of 2020 and in the first quarter of 2021, it's not

altogether surprising that the spring 2021 deadline was missed. However, having produced a draft set of regulations, the Government ran a second consultation from 7 April to 1 June.

On 8 July 2021, Government published its [response to the second consultation](#), announcing some minor changes to regulations.

Draft regulations went through Parliament during July, and [The Teachers' Pensions \(Miscellaneous Provisions\) \(Amendment\) Regulations 2021](#) came into force on 1 August 2021.

Schools wishing to use the phased option withdrawal option must send written notice to the Secretary of State. They will then become an "accepted phased withdrawal school" on the first day of the month after notice is given. Schools are allowed to opt back into TPS at any time (for all eligible staff, and on the condition that they provide a bond). We understand that the first schools to use these regulations did so during August, closing TPS to new joiners on 1 September 2021.

The three key protections for teachers are as follows:

1. A teacher who has opted out of the TPS prior to the date that their school becomes an accepted phased withdrawal school is eligible to be re-enrolled into TPS before the school withdraws.
2. A teacher who is a deferred member of the TPS at the phased withdrawal date – because they had taken a period of non-pensionable family, sick or unpaid leave (for less than 5 years) – is eligible to be re-enrolled into the TPS on their return to the same employer.
3. A teacher who is an active member of the TPS, working for a school that has opted for phased withdrawal, and who leaves pensionable service due to family or sick leave (for less than 5 years) is eligible to be re-enrolled into the TPS on their return to the same employer.

The majority of consultation responses received were in support of the proposed amendments and protections for teachers.

The joint consultation response from ISC/ISBA suggested that **120+** independent schools may be considering their position in the TPS, pending the outcomes of the phased withdrawal policy.

Government's objective remains to keep teachers in the TPS who would otherwise lose access if independent schools were to opt out. It also believes that the protection offered (see 2 and 3 above) is reasonable and consistent with current TPS rules for breaks in service.

The consultation response also highlighted that **"Nearly 60% of independent schools do not participate in the TPS at this time"**.

In conclusion

1. With legislation now in force, schools can make plans for phased withdrawal.
2. The TPS administrator has produced [guidance for employers and teachers](#), covering employer obligations and the potential impact on teachers. It contains a form school governors should use to apply to TPS for phased withdrawal.
3. Schools need to communicate carefully with all teachers (and new teaching recruits).

How First Actuarial can help

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We help schools develop their pensions strategy and manage pension change projects. We also provide training, modelling, DC contribution design, DC provider selection and consultation support services.

We offer a unique blend of public service pensions expertise, consultancy and communication skills.

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