



Scottish Public
Pensions Agency
Buidheann Peinnseanan
Poblach na h-Alba

**The Teachers' Pension
Scheme (Scotland)
(Amendment) Regulations
2022**

**Scottish Government
consultation 2021**

About This Consultation

Overview

This consultation is seeking views on the draft regulations to amend the Scottish Teachers Superannuation Scheme and the Scottish Teachers Pension Scheme 2015. The amendments are intended to support delivery of The Public Service Pensions and Judicial Offices Bill that is currently being enacted by the UK government. The Bill and these Regulations are part of a package of measures to address the age discrimination that was identified by the courts in the transitional protections afforded to some scheme members in public service pension schemes.

While the Scottish Ministers have functions in relation to teachers' pensions in Scotland, occupational pensions in general are a reserved matter outside the powers of The Scottish Parliament. The Scottish Ministers must therefore implement the policy reflected in the Bill.

Duration of Consultation

This consultation will run for a period of eight weeks commencing on Monday 22 November 2021 and ending on Sunday 16 January 2022.

How to respond

Please use the consultation response form and once completed send to sppapolicy@gov.scot before midnight on the closing date.

Alternatively, responses can be posted to:

Scottish Teachers' Pension Scheme Consultation
SPPA
Tweedside Park
Tweedbank
Galashiels
TD1 3TE

Further information

If you are unable to access an electronic version of the document, please write to the above address and a paper copy will be provided.

Data Protection Statement

The Scottish Public Pensions Agency (SPPA) is an executive Agency of the Scottish Government and forms part of the legal entity of the Scottish Ministers (Framework Document).

This framework of statutory powers and responsibilities, as agreed with the Scottish Ministers, enables SPPA to undertake the role of data controller for the processing of personal data which is provided as part of your response to the consultation. Any response you send us will be seen in full by SPPA staff dealing with the issues which this consultation is about or planning future consultations.

The process allows informed decisions to be made about how SPPA exercises its public function.

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If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

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For further details about the information the SPPA holds and its use, or if you want to exercise your rights under the GDPR, please refer to our Privacy Policy in the first instance or contact:

Agency Data Protection Officer
Scottish Public Pensions Agency
7 Tweedside Park
Tweedbank
GALASHIELS
TD1 3TE

Tel: 01896 892 469

Website: <https://pensions.gov.scot/>

The contact details for the Information

Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113

Website: <https://ico.org.uk>

Contents

1. Background	6
2. The prospective regulations to be consulted on	8
3. The Draft Amendments	8
4. Transfers In	12
5. Ill Health Underpin	12
6. Added Service and Additional Pension Arrangements	13
7. Other Transitional Provisions	14
8. Consultation Questions	15

1. Background

1.1. The Public Service Pensions Act 2013 (the 2013 Act) introduced reforms to public service pension schemes. The aim of the reforms was to implement the recommendations of the [Independent Public Service Pensions Commission: Final Report](#)¹, to make public service pensions, which due to increased workforce longevity had increasingly been paid for by taxpayers, more affordable and sustainable. New pension schemes were introduced, designed to make public service pensions sustainable through a higher normal pension age (NPA) for all scheme members, calculating benefits on a career average revalued earnings (CARE) basis rather than through final salary, and the introduction of a cost control mechanism.

1.2. The 2013 Act required responsible authorities, including devolved governments, to make regulations establishing the new schemes with effect from 1 April 2015. The final salary pension schemes (referred to as “legacy schemes”) were closed on 31 March 2015 and scheme members could no longer accrue any pension in them unless they fell in to the category of what is known as ‘transitional protection’.

1.3. Transitional protection provided for scheme members who were aged within 10 years of their Normal Pension Age (NPA) on 31 March 2012, to be “fully protected” and allowed to remain in their legacy scheme(s). “Taper protected” members who, on 31 March 2012, were aged between 10 and 13 years and six months of their NPA were allowed to remain in their legacy scheme for a period before transitioning to the reformed CARE scheme before 31 March 2022.

1.4. Following reform, members of the judicial and firefighters pension schemes challenged the transitional protection element of the reforms and in December 2018 the [Court of Appeal found](#) that the transitional protections unlawfully discriminated against younger members, as transitional protection was only offered to older scheme members. The courts required that this unlawful discrimination be remedied by the government. In a [written ministerial statement](#) the UK government accepted the ruling had implications for all public service schemes that contained similar transitional protection arrangements, including the Scottish Teachers Pension Scheme, and have since [consulted extensively](#) on the mechanism for the remedy.

1.5. The UK Government introduced primary legislation, [The Public Service Pensions and Judicial Offices Bill \(PSPJO Bill\)](#), to Parliament in July 2021. The provisions in this Bill mean that all scheme members, regardless of transitional protections, who continue in service from 1 April 2022 will do so as members of the

¹ This is also known as ‘The Hutton Report’

Scottish Teachers Pension Scheme 2015, hereafter referred to as “the 2015 Scheme”. The Scottish Teachers Superannuation Scheme, known as “the Legacy Scheme”, will be closed to all members for future service from 31 March 2022. The period between 1 April 2015 and 31 March 2022 where scheme members may have built up pension benefits in any one of the above schemes² is known as ‘the remedy period’. Eligible scheme members will have a choice of pension benefits for the remedy period³.

1.6. The primary and secondary legislation will remove the transitional protection that the Courts found to be discriminatory as all eligible members, irrespective of age and proximity to NPA, will now have accrued benefits in their legacy schemes for the remedy period. All eligible members will be given a choice of preferred pension benefits for the remedy period under the provision known as deferred choice underpin (DCU)(pensioner members and representatives of deceased members will be given what is referred to as an immediate choice).

1.7. Secondary legislation in support of the Bill will be made in two phases. The first phase addresses the prospective changes and is the subject of this consultation. Phase two will follow in 2022/2 and will establish the DCU/immediate choice and return eligible members to their legacy schemes for the remedy period.

1.8. The first phase of secondary legislation to be consulted on now will allow provisions for the prospective remedy changes to be enabled. That is, the move of all active scheme members to the reformed scheme from 1 April 2022 and the closure of the legacy schemes to future accrual from 31 March 2022. This ensures that from 1 April 2022 all serving teachers who are in pensionable service will be accruing future benefits in the same scheme.

1.9. The second phase of draft Regulations will be new provisions that implement the DCU/immediate choice and facilitate the correction of pensions already in payment including addressing the underpayment and overpayment of pensions and pension contributions for pension scheme members and pensioners. The second set of draft Regulations is out of the scope of this consultation and will be consulted on separately at a later date.

² This is dependent on a scheme member’s personal transitional protection status. Between 1 April 2015 and 31 March 2022 protected members will have built up pension in their legacy scheme while unprotected scheme members will have built up pension in the reformed scheme. Taper protected members may have built up a mixture of both legacy and reformed scheme pension during the remedy period.

³ The remedy will allow all eligible members to choose whether they wish to receive legacy or reformed scheme benefits in relation to the remedy period. Members can choose either legacy scheme benefits for the full period or reformed scheme benefits, they cannot opt for a mixture of the two.

2. The prospective regulations to be consulted on

2.1. The rules of the Scottish Teachers' Pension Schemes are set out in Regulations, which are a form of secondary legislation. Rules can be amended or replaced by new Regulations drawn up in accordance with the powers under, and requirements of, the Public Service Pensions Act 2013 and, where relevant, the Superannuation Act 1972.

2.2. Two distinct sets of Regulations are required to support the Bill requirements and address the discrimination in the transitional protections. This consultation covers the first set of draft scheme regulations and must be consulted on at the same time as the Bill progresses through Parliament to ensure that necessary scheme amendments can be enacted for 1 April 2022 when the Bill comes into force.

2.3. The draft Regulations under consultation will:

1. Close the legacy Scottish Teachers' Superannuation Scheme to future accrual from 1 April 2022
2. Move all active scheme members to the 2015 Scheme⁴
3. Create an underpin that facilitates the continuation of any ill health retirements that are in progress over the period when the Legacy Scheme closes and active scheme members move to the 2015 Scheme

3. The Draft Amendments

3.1. The Scottish Ministers present for consultation the draft **The Teachers' Pension Scheme (Scotland) (Amendment) Regulations 2022**. This section explains how the draft Regulations amend existing scheme rules and deliver the Bill requirements.

3.2. **Regulation 1**(1) establishes the title of the Regulations and in 1(2) the commencement date is set at 1 April 2022.

3.3. **Regulation 2** of this draft Scottish Statutory Instrument (SSI) ensures that Scottish Teachers' Pension Scheme Regulations follow the requirements of the 2013 Act (section 18) as amended by clause 76 of the PSPJO Bill restricting the further

⁴ This will effectively move those who are not already members of the 2015 Scheme. In all cases these will be members who held full transitional protection and were classed as protected scheme members. Those previously classed as Unprotected and Taper Protected will already be accruing pension as members of the 2015 Scheme.

accrual of pensionable service in the Scottish Teachers' Superannuation Scheme from 1 April 2022. This is achieved by:

- defining the date full protection members cease to be in pensionable service in the Legacy Scheme as 1 April 2022,
- setting the transition date for protected members as 1 April 2022,
- defining the meaning of “closing date” as 31 March 2022 to provide continuity of service for protected members who move to the 2015 Scheme,
- limiting the application of the 2005 regulations to the 31 March 2022

3.4. **Regulation 2(2)** sets the transition date for protected members to the 2015 Scheme at 1 April 2022. This is achieved by adding further detail to the definition of transition date in paragraph 1 of Schedule 3 (Interpretation) of **The Teachers' Pension Scheme (Scotland) (No 2) Regulations 2014**⁵. The transition date is set at 1 April 2022 and this amendment also clarifies that the transition date only applies to scheme members who are not already in receipt of a retirement pension under the Legacy Scheme. The regulation is set out below with the added text highlighted in bold:

“transition date” means—

(a) for a tapered protection member of the existing scheme, the day after the tapered protection closing date;

(aa) for a full protection member of the existing scheme, other than a full protection member to whom a retirement pension has become payable under the existing scheme, means 1st April 2022;

(b) for a transition member by virtue of the application of paragraph 13 who is not a protected member of the existing scheme, the day after the scheme closing date.

3.5. **Regulation 2(3)** adds a definition of the closing date into part 3 of Schedule 3 (meaning of “continuity of service”) of **The Teachers' Pension Scheme (Scotland) (No 2) Regulations 2014**. This defines the closing date for full protection members as 31 March 2022. Part 3 of Schedule 3 is thus amended (in bold) to the following:

3 *Meaning of “continuity of service”*

(1) *A transition member (P) has continuity of service unless P has a gap in service exceeding 5 years which—*

(a) begins on or before the closing date; and

⁵ S.S.I. 2014/292

(b) ends on the day on which P becomes an active member of this scheme.

(2) In this paragraph, “closing date” means—

(a) if P is a full protection member of the existing scheme, 31st March 2022;

(b) if P is a tapered protection member of the existing scheme, P's tapered protection closing date; or

(c) otherwise, the scheme closing date.

3.6. **Regulation 2(4)** changes the meaning of full protection member to insert a new clause that ensures membership of the Legacy Scheme cannot continue after 31 March 2022. The amended rule is added to paragraph 6 of Schedule 3 (Meaning of “full protection member”) and is illustrated below:

6 *Meaning of “full protection member”*

(1) A person (P) is a full protection member of an existing scheme on the scheme closing date if sub-paragraph (1A) or (1B) applies.

(1A) This sub-paragraph applies if—

(a) on that date, P is an active member of the existing scheme;

(b) on 31st March 2012, P was an active member of the existing scheme; and

(c) unless P dies, P would reach normal pension age under the existing scheme before 2nd April 2022.

(1B) This sub-paragraph applies if—

(a) P was an active member of an existing public service scheme on the scheme closing date and on 31st March 2012;

(b) P enters eligible employment not more than 5 years after leaving pensionable service under the existing public service scheme;

(c) a pension in respect of all of P's service in the existing public service scheme has not become payable on or after 1st April 2012; and

(d) unless P dies, P would reach normal pension age under the existing scheme and the existing public service scheme on or before 1st April 2022.

(2) P ceases to be a full protection member of the existing scheme on whichever of the following days occurs first—

(a) the day on which P ceases to be in pensionable service under the existing scheme; or

(b) 31st March 2022.

3.7. **Regulation 2(5)** ensures that no election to purchase additional pension through contributions arrangement can take place after 31 March 2022⁶. This ends entitlement to purchase additional pension in the legacy scheme for all protected scheme members on that date. This is achieved by amending sub-paragraph (3) of paragraph 20 of Schedule 3 (application of the 2005 regulations). The amended regulation is set out below:

20 Application of the 2005 Regulations

(1) The 2005 Regulations apply in relation to the calculation of benefits payable in respect of pensionable service under the existing scheme, save that an application for payment of benefits must be made under regulation 159 of these Regulations and not under the 2005 Regulations.

(2) The 2005 Regulations apply in relation to the payment of additional pension with a retirement pension under the existing scheme, save that an application for payment of benefits must be made under regulation 159 of these Regulations and not under the 2005 Regulations.

*(3) The 2005 Regulations apply **until 31st March 2022** in relation to an election made by a person (P) for contributions to be paid monthly under paragraph 3(a) of Schedule 2A to those Regulations if the election is made before—*

(a) the date P ceases to be in pensionable service under the existing scheme, if P is a full protection member; or

(b) the transition date.

⁶ Section 6 below on additional pension arrangements further details the policy intention

4. Transfers In

4.1. The transfer in of unreformed final salary scheme benefits to the Scottish Teachers' Pension Scheme 2015 is provided for in Part 5 of Schedule 3 (Receipt of club transfer values). It is recognised that the provisions may not adequately provide for full protection members who will transition to the 2015 Scheme on 1 April 2022.

4.2. The intention is to mirror the provision for tapered and unprotected members that is set out in paragraph 18 of Part 5. Specifically, that unreformed final salary benefits will be accepted to the Legacy Scheme and any comparable reformed New Scheme benefits will be accepted into the 2015 Scheme. It is possible that a further amendment may be required to ensure this provision can be extended to protected members who transition to the New Scheme on 1 April 2022.

5. Ill Health Underpin

5.1. There will be cases that will be in the process of being considered for ill health retirement during the transition to the reformed scheme i.e. the ill health process will begin on or before 31 March 2022 and will not conclude until 1 April 2022 or later. This area is still under development so our draft regulations do not contain any provision on ill health retirements.

5.2. Once the policy is finalised the intention is to make Regulations protecting the position of ill health retirees whose cases are underway but still pending on 31 March next year, and in particular to ensure they are no worse off as a result of a retirement decision being made after that date. This will be achieved through an "underpin" ensuring that members who will receive a 2015 Scheme ill health pension calculated at the date they actually retire will not receive less than they would have achieved if the pensioner had received a legacy scheme pension calculated at 31 March 2022. If it is shown that the legacy terms would have been greater, the 2015 Scheme pension must be increased by the difference between the two.

5.3. The proposed ill health underpin will work as follows:

- A member makes an application for retirement on grounds of ill health on or before 31 March 2022
- The member then automatically moves to the 2015 Scheme on 1 April 2022 and remains in the scheme until the ill health retirement has completed
- The 2015 Scheme pension arrangement applies in the same way as it does to any other member who moves to the 2015 Scheme before their ill health process starts

- A notional ill health pension is calculated in accordance with the member's legacy scheme provisions on the basis that they had been ill health retired on 31 March 2022
- A comparison of the two pensions is made and where the legacy arrangements would have resulted in a higher pension the 2015 Scheme pension is uplifted by the amount of the difference between the two arrangements
- The final ill health pension and uplift (if applicable) will be paid from the 2015 Scheme

5.4. Where the notional legacy scheme ill health pension provides a greater ill health pension entitlement, the difference between both calculations will be paid to the member as a pension enhancement from the 2015 Scheme. Survivor benefits will be paid in accordance with the 2015 Scheme regulations.

6. Added Service and Additional Pension Arrangements

6.1. Provisions which allow arrangements for purchasing added service⁷ or additional pension in the Legacy Scheme through periodical contributions agreements will continue after 31 March 2022.

6.2. It is possible for members of the Legacy Scheme to purchase additional pension, depending on individual circumstances and by agreement with the scheme manager. Additional pension can be paid for either in a lump sum or by paying additional contributions in instalments over a number of years. Added service and additional pension agreements that are already underway will continue after the transfer to the 2015 Scheme. This is because they do not involve continuing to accrue legacy scheme pensions, rather, the scheme members concerned are paying in instalments for a previously agreed enhancement to their pension or pensionable service. These arrangements are therefore unaffected by the Bill or by these draft regulations.

6.3. The policy intention is to ensure that only valid, existing arrangements entered into before 1 April 2022 will be permitted to continue and that scheme members will not be able to enter into any new arrangements to purchase additional pension in the Legacy Scheme after 31 March 2022.

6.4. We are considering the impact of the Bill on the existing arrangements and may need to make additional amendments to these regulations to ensure the policy intention can be fulfilled. Any further amendment that is required will be included in the final Regulations.

⁷ Provision to purchase added service, called "past added years" or "added years" was ended on 31 March 2007.

7. Other Transitional Provisions

7.1. All other transitional provisions that exist in the 2015 Scheme are not affected by The Bill or these draft Regulations. In particular:

7.2. **Final salary link** – The 2013 Act⁸ already provides a final salary link, meaning that legacy scheme benefits are calculated with reference to the member's pensionable earnings at the point of retirement, even though that may be as a member of the 2015 Scheme. This provision is maintained beyond 2022.

7.3. **Eligibility of Pensioners** - Pensioner members of the Scottish Teachers Superannuation Scheme are eligible to be members of the 2015 Scheme through the provision set out in Regulation 18 of The Teachers' Pension Scheme (Scotland) (No 2) Regulations 2014. No additional amendment is required.

⁸ [Schedule 7 of The Public Service Pensions Act 2013](#)

8. Consultation Questions

8.1 Question 1 - Do you think the draft Regulations adequately ensure that the legacy pension schemes are closed to future accrual on 31 March 2022 and that all active pension scheme members are moved to the 2015 pension scheme from 1 April 2022? Do you think there are any errors or omissions in the draft in achieving this aim?

8.2 Question 2 - Do you have any views on the proposed treatment of pension scheme members who have applied for ill health retirement before 31 March 2022 but who don't retire until on or after 1 April 2022? In particular, does this proposal in your view, ensure that these members are treated no less favourably than if the application was determined on 31 March 2022?

8.3 Question 3 - Do you have any views on the proposed treatment of additional contributions arrangements? In particular, do you agree that existing provisions in the regulations allow for arrangements on additional pension and added service entered into under the existing schemes to continue after 31st March 2022?

8.4 Question 4 - Do the prospective Regulations in this consultation have an impact on people with protected characteristics, beyond those equality considerations undertaken and set out in the equalities impact analysis undertaken alongside this consultation and in support of the PSPJO Bill. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation. Specifically, do you think that the draft regulation amendments and policy intent described above will have any positive or negative impacts on people with protected characteristics, beyond those already considered? If so, which and why/why not?

8.5 Question 5 - Are there any other areas that you think should be addressed in these regulations to ensure all members are moved to the 2015 Scheme and the differential treatment as identified by the Court of Appeal is ended?