



Scottish Public
Pensions Agency
Buidheann Peinnseanan
Poblach na h-Alba

**Scottish Teachers' Pension
Scheme: Proposed Changes to
Membership Eligibility Criteria**

**Scottish Government consultation
2024**

August 2024

About This Consultation

The Scottish Teachers' Pension Scheme (STPS) continues to be an integral part of the remuneration package for teachers in Scotland. The Scheme offers the security of a guaranteed income in every year of retirement for all its members, on some of the most generous terms available from a pension scheme.

Membership of the scheme is provided for individuals who are employed by a participating employer, predominantly in a teaching role, and where they are between the ages of 16 and 75. Participating employers in the STPS include Local Authorities, Colleges, Universities, Independent and Special Schools.

The STPS regulations do not expressly define what a 'teaching role' is, however, traditionally it is expected to be frontline teaching and for timetabled classes or lectures to take up most of the role the individual performs.

There are circumstances where other individuals may be eligible for membership of the Scheme, without necessarily being directly engaged in a teaching role. In the legacy Scottish Teachers' Superannuation Scheme (STSS) individuals were previously described as 'organisers' and 'advisers'. The legacy STSS has now closed to active members from 1 April 2022, however, and the STPS does not include the term 'adviser'. This has led to uncertainty about who can be a member of the STPS.

Whilst scheme eligibility is clear for the majority of scheme members there are a number of areas where clarity is required and others which could usefully be updated to make them relevant to the present-day education system.

This consultation document seeks views on proposals to prospectively amend the eligibility criteria for membership of the STPS with the aim of providing clarity on who can be a member of the scheme.

Duration of Consultation

This consultation will run for a period of 12 weeks commencing on 23 August 2024 and ending on 15 November 2024.

How to respond

Please use the consultation response form which can be downloaded from the SPPA website and once completed, send to SPPAPolicyConsultationResponses@gov.scot before midnight on the closing date.

Alternatively, responses can be posted to:

STPS: Scheme Eligibility Consultation
SPPA Policy,
7 Tweedside Park
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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.

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

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1. Background – Eligibility for membership of the Scottish Teachers’ Pension Scheme (STPS)

1.1 Membership of the STPS is provided for individuals who are employed by a participating employer, predominantly in a teaching role, and where they are between the ages of 16 and 75. The STPS is the default pension scheme for all teachers working in local authorities and independent schools in Scotland. The STPS also extends to lecturers working in further education colleges and post-1992 universities.

1.2 There are a total of 135 participating employers in the STPS including, 32 Local Authorities, 24 Colleges, 14 Universities, and 65 Independent and Special Schools. There were a total of 79,527 active members of the STPS as 31 March 2023.

1.3 Membership of the scheme is not intended for all people who are involved with the delivery of education services and is not applicable to non-academic staff.

1.4 Eligibility for membership of the STPS is determined by the Teachers' Pension Scheme (Scotland) (No 2) Regulations 2014 (“the 2014 Regulations”). The regulations provide that eligibility is extended to a ‘teacher’ who is employed in eligible employment in a local authority school, independent school, special school, college, or university.

1.5 Prior to the introduction of the STPS on 1 April 2015, all eligible teachers were enrolled in Scottish Teachers’ Superannuation Scheme (STSS), which is the legacy final salary scheme and provided benefits based on a Normal Pension Age (NPA) of age 60 for members who joined prior to 1 April 2007, or age 65 for members who joined after 1 April 2007. From 1 April 2015, all new scheme members joined the STPS, which is a reformed Career Average Revalued Earnings (CARE) scheme with an NPA aligned to State Pension Age; there were, however, transitional protections which applied to existing scheme members within 10 years of retirement allowing them to remain in the STSS.

1.6 The transitional protections which allowed some members to remain in the STSS were based on a member’s age and were subject to challenge in the Judiciary (“McCloud”) and Firefighters’ (“Sargeant”) legal cases, on the grounds of age discrimination. In 2018, the Court of Appeal found that these protections discriminated against younger scheme members. The government therefore committed to remove this discrimination for the period between 1 April 2015 and 31 March 2022. This is known as the ‘McCloud remedy’.

1.7 As a result of the McCloud remedy, the final salary STSS closed to further accrual from 31 March 2022 and all members moved to the STPS for future service from 1 April 2022.

1.8 The terms of the STPS are set out in the 2014 Regulations and the terms of the STSS are set out in the Teachers’ Superannuation (Scotland) Regulations 2005 (“the 2005 Regulations”). Eligibility to join the schemes is set out in Schedule 2 (Pensionable Employment) of the 2005 regulations and Schedule 1 Part 2 (Pensionable Service) of the 2014 regulations. Each schedule outlines specific employments that allow eligibility to the scheme.

The 2005 Regulations - definition of a teacher

1.9 The 2005 Regulations historically defined a teacher as including “...a person who has ceased to be a teacher, and an adviser”. The inclusion of the term “adviser” provided that an employee who was previously employed as a teacher could be considered eligible for scheme membership where they moved to a role which included to a substantial extent the control or supervision of teachers, or where the post was connected to education or in services ancillary to education.

1.10 Whilst the definition of a teacher does not go further, it is accepted that a teacher’s role is relatively clear and would cover key specific duties that include:

- (a) planning and preparing lessons and courses;
- (b) delivering lessons;
- (c) assessing development, progress and attainment;
- (d) reporting on development, progress and attainment.

1.11 The definition of “adviser” was introduced to the STSS regulations in 1992 and originated from the previous definitions of “organiser” and “supervisor” as contained in the 1977 Regulations. In the 1990’s, an adviser was a specific post in Scotland encompassing the duties of the previous organisers and supervisors with separate salary scales determined by the Scottish Joint Negotiating Committee (SJNC). Following the introduction of the 1992 regulations, the definitions of organiser and supervisor were amalgamated to form the new definition of adviser.

1.12 At that time, an adviser had to be paid on a salary scale applicable to teachers, but this condition was removed in 2000 to recognise advisers employed by further education colleges who no longer had their salaries determined by the SJNC. The SJNC was abolished in 2001 and was replaced by the Scottish Negotiating Committee for Teachers (SNCT) which determines the salary scales for teachers, educational psychologists, quality improvement officers and education officers employed in Scotland.

1.13 The role of adviser is no longer recognised by local authorities and has evolved into roles with different titles such as Quality Improvement Officers (QIOs) or Educational Support Officers (ESOs). However, individuals working in these advisory roles are still provided access to the scheme.

The 2014 Regulations - definition of a teacher

1.14 The 2014 Regulations do not provide a definition of a “teacher”, nor do they define the term “adviser”, which had become outdated. Instead, the regulations rely on defining what are considered eligible employments and provide access to the scheme to ‘teachers’ working in those eligible employments.

1.15 While the 2014 regulations do not expressly define what a ‘teaching role’ is, it is expected to be frontline teaching and for timetabled classes of lectures to take up most of the role the individual performs.

Issues with clarifying eligibility for membership of the STPS

1.16 Although eligibility is clear for the majority of scheme members, there are some areas where clarity is required, and others which could usefully be updated to provide clear advice and guidance on scheme eligibility for those roles not currently specified in the 2014 regulations.

1.17 As noted above, while the term “adviser” has been removed from the regulations there is still a desire to extend eligibility to those working in adviser type roles which are linked to frontline teaching and which, to a substantial extent, involve the control or supervision of teachers, such as Quality Improvement Officers.

1.18 The previous definition of “adviser” was considered too broad as it allowed members of the scheme who moved into any role, “connected to education or in services ancillary to education” to retain membership. This previous definition of adviser and its removal from the current scheme regulations has caused confusion and uncertainty for employers, particularly local authorities, about who can be in the scheme.

1.19 Scheme administrators are having to deal with ever-increasing numbers of enquiries from teachers’ employers and members and are having to request and consider job descriptions on an individual basis to establish if the necessary criteria are met to be eligible for scheme membership under the definition of adviser. In circumstances where individuals are entered into the wrong pension scheme, this can be at a significant cost to the employer and the member.

1.20 In Further Education there are similar issues with regards to inclusion in the STPS, with some support staff undertaking an element of teaching but not being lecturers and, therefore, not being eligible for the scheme. In Higher Education, issues have arisen where a lecturer moves between a lecturing and research post while wishing to maintain continuity of pension provision. Restrictions around access to the STPS have also caused friction around recruitment – for example, where an individual might not want to move to a promoted post because they might lose access to the STPS.

Stakeholder Engagement

1.21 As a result of the difficulties experienced in determining who is eligible for STPS membership, SPPA committed to review the eligibility criteria for scheme membership and made a formal request to the Scottish Teachers’ Pension Scheme Advisory Board (‘the SAB’) for advice. The SAB is a statutory board made up of scheme member (trade union) and employer representatives who have responsibility to provide advice to Ministers on changes to the scheme. The SAB initiated a sub-group to review the membership eligibility criteria and to consider a range of issues with eligibility across all relevant education settings.

1.22 The group considered areas where clarity around eligibility is required, and others which could usefully be updated to make them relevant to the present-day education system. These considerations resulted in a number of recommendations made by the SAB which form the basis of the proposed changes detailed in Section 2.

1.23 The proposed recommendations require amendments to the scheme regulations and therefore require the consent of HM Treasury (HMT), which also underwrites the scheme. While the Scottish Ministers have executive devolved responsibility for the STPS, occupational pensions in general are a reserved matter outside the powers of the Scottish Government. The Scottish Ministers must therefore implement policy which reflects UK Government primary legislation and any changes to the STPS via secondary legislation require HMT approval. In preparing this consultation, we have engaged with HMT officials and the proposals reflect the acceptable parameters of eligibility, with particular consideration given where employees might have access to another public service pension scheme, for example the Local Government Pension Scheme.

2. Proposed Changes to Scheme Eligibility

2.1 Based on the recommendations from the SAB and subsequent discussions with HMT officials, SPPA have developed proposals to amend STPS rules to provide clarity on who is eligible to be a member of the STPS.

2.2 The proposals will be prospective only and will apply from the date the legislation comes into force. For employees already in the STPS whose role going forward may no longer meet the updated eligibility criteria, the policy intention is to allow those members to remain in the scheme until they leave their current post.

2.3 The proposals aim to clarify and extend eligibility in the following five key areas:

i. Posts detailed in the Scottish Negotiating Committee for Teachers (SNCT) Handbook

2.4 As previously discussed, for many years the definition of “adviser” and the earlier definitions of “organiser” and “supervisor” were linked to teachers’ salary scales. “Advisers” (and teachers) salaries were negotiated through a statutory body, the Scottish Joint Negotiating Committee (SJNC). The SJNC was abolished by the Standards in Scotland’s Schools etc. Act 2000, and was replaced by the McCrone Committee, and subsequently the Scottish Negotiating Committee for Teachers (SNCT) which currently determines pay and conditions.

2.5 The SNCT is a tripartite negotiating body whose constituent members are drawn from the Convention of Scottish Local Authorities (COSLA), the Scottish Government and the recognised trade unions representing teachers in Scotland. The principal purpose of the SNCT is to negotiate collective agreements on salaries and conditions of service that assist the development of a highly skilled and motivated teaching profession. The SNCT Handbook contains the National Scheme of Salaries and Conditions of Service for Teachers and Associated Professionals and details the roles which these conditions apply to.

2.6 The applicable roles covered by the SNCT Handbook are Teacher; Chartered/Lead/Principal/Depute/Head Teacher; Music Instructor; Educational Psychologist/Senior/Depute/Principal; Education Support Officer; Quality Improvement Officer, and Quality Improvement Manager.

2.7 Determining eligibility based on the roles detailed in the SNCT Handbook will provide clarity for employers on who is eligible to join the STPS. The handbook covers all teachers and ancillary staff who were previously captured under the ‘adviser’ definition but provides clarity on which specific roles are considered to be an adviser.

2.8 Included in the roles detailed above are Music Instructors and Quality Improvement Managers who in some cases have not previously been eligible to join the STPS. The proposal therefore involves extending eligibility to:

- Music Instructors who are registered with the General Teaching Council for Scotland (GTCS), but not to self-employed music instructors who would not be in eligible employment.
- Quality Improvement Managers whose natural career path is to progress from QIO (which is a role currently eligible for membership), therefore, eligibility is important for recruitment and retention of appropriately skilled staff.

2.9 It is proposed that in the event of future changes to the SNCT Handbook,

separate approval would be required before extending eligibility to any new categories of staff.

Q1. Do you agree or disagree with the proposal for all posts detailed in the SNCT Handbook to be eligible for membership of the STPS?

ii. Individuals who move from lecturing to research roles in Higher Education Institutions (HEI)

2.10 Some staff in Higher Education Institutions (HEI) frequently move back and forth between a lecturing role, which are eligible for membership of the STPS, and researcher roles which have not historically been eligible. Therefore, switching roles potentially involves moving pension schemes, bringing challenges to recruitment, and creating barriers to encouraging a flexible workforce.

2.11 It is proposed to include researchers in the scheme, where the researcher was previously a member of STPS in a lecturing role. This will provide clarity to both employees and employers and help support continuity of employment. The change allows for continuity of pension provision by allowing the individual to remain in STPS.

Q2. Do you agree or disagree with the proposal to extend eligibility for those who move from a lecturing role (where they are a member of the scheme) to a research role in Higher Education Institutions (HEI)?

iii. Lecturers in Further Education

2.12 There is a requirement for clarity in the further education sector with who should be eligible to join the scheme. The scheme is designed for lecturers who are delivering frontline teaching and where timetabled classes or lectures to take up most of their role. However, there are support staff employed within further education institutions, whose roles include an element of teaching, however, lecturing or teaching is not the primary purpose of their role and, therefore, they should not be eligible for membership of the scheme.

2.13 In order to provide certainty for employers and to aid administration, it is proposed to amend the word 'teacher' to 'lecturer' within the scheme regulations relevant to further education, to provide the necessary clarity that, in further education institutions, only lecturers are eligible for membership of the STPS.

Q3. Do you agree or disagree with the proposal to clarify that only lecturers in Further Education Institutions should be included for STPS eligibility?

iv. **Secondments**

2.14 Secondments can play an effective part in the management of organisations and the interests of a person's career and personal development. We are therefore also exploring how a consistent and uniform approach to secondments may best be accommodated within the STPS.

2.15 In order for a scheme member to retain eligibility, a secondment should be for an educational role, where the member has previously been a member of STPS.

2.16 The proposal is that existing scheme members should retain eligibility if they are seconded to another educational role, up to a maximum of four years. This provides consistency and clarity to employees and employers and helps support the continuity of employment.

Q4. Do you agree or disagree with the proposal for secondments of up to four years to be included for STPS eligibility?

v. **Senior Manager Posts in Local Authorities, Further Education Colleges and Universities**

2.17 Over a considerable period of time, the sector has seen the introduction of many management posts which are relevant to education. These include senior management posts which do not themselves involve direct face-to-face teaching.

2.18 Senior Manager posts in local authorities, further education colleges and Universities are an example of where not having access to the STPS creates a barrier for recruitment and retention of staff.

2.19 It is proposed that, where a current member of STPS is promoted to a post connected to the control or supervision of teachers, they would be eligible to retain STPS membership. This would provide continuity of pension provision for those promoted employees and provide clarity to employers.

Q5. Do you agree or disagree with the proposal for senior manager posts connected to the control or supervision of teachers to be included for STPS eligibility?

2.20 It is also proposed to add some type of discretion for Scottish Ministers to allow for other groups to be members should the need arise.

3. Proposed Draft Amending Regulations

3.1 To apply the proposed changes, we will need to amend scheme rules. The rules of the STPS are set out in regulations, which are a form of secondary legislation. Those rules can be amended or replaced by new regulations drawn up in accordance with the powers and requirements of the Public Service Pensions Act 2013.

3.2 The proposed amendment regulations are presented for consultation in draft. These regulations will amend Schedule 1 (Eligible employment) of the 2014 regulations to clarify who is eligible for membership of the STPS. The proposed changes will be prospective only and will apply from the legislation's implementation date.

3.3 Details of the proposed draft amendment regulations are noted below, together with a summary of what each amendment means:

3.4 In order to deliver proposal (i) to clarify eligibility around posts detailed in the SNCT Handbook, an additional paragraph (15A) will be added to Schedule 1. This paragraph will simply list the roles detailed in the handbook which are eligible for membership of the scheme. The draft paragraph is shown below:

“15A. Employment as a music instructor, educational psychologist, senior educational psychologist, depute principal educational psychologist, principal educational psychologist, education support officer, quality improvement officer or quality improvement manager in a public school or by an education authority.”

3.5 Proposal (ii) will be included in regulation by introducing a new paragraph (15B), shown below, which provides access to individuals moving from a lecturing role into a research role in a HEI.

“15B. Employment as a researcher engaged in research in education at an institution providing higher education, as defined in the Further and Higher Education (Scotland) Act 1992([2]), where the employee's employment immediately before commencing employment at that college or institution was reckonable service under an enactment relating to the superannuation of teachers in Scotland.”

3.6 Proposal (iii) will be provided for in regulation by amending paragraph 6, shown below, to replace the word teacher with lecturer in respect of eligibility for those working in a college of further education.

“6. Employment as a ~~teacher~~ **lecturer** in a college of further education which is managed by a board of management in terms of Part I of the Further and Higher Education (Scotland) Act 1992.”

3.7 Proposal (iv) will also involve inserting a new paragraph (15C) as shown below to provide access for individuals to move into a seconded role, connected to education, for up to four years.

“15C. Employment for a temporary period not exceeding four years in a post connected to education, the control or supervision of teachers, or services ancillary to education, where the employee's employment immediately before

commencing that employment was reckonable service under an enactment relating to the superannuation of teachers in Scotland.”

3.8 Finally, the new paragraph 15D, shown below, will extend eligibility for existing members of the scheme who move into a senior manager role.

“15D. Employment by an education authority, college of further education or institution providing higher education, as defined in the Further and Higher Education (Scotland) Act 1992, in a post connected to the control or supervision of teachers, where the employee’s employment immediately before commencing that employment was reckonable service under an enactment relating to the superannuation of teachers in Scotland.”

3.9 In addition, it would also be our intention to amend paragraph 16 (as shown below), which covers Employment as a teacher of a kind not elsewhere specified in the regulations. This would provide some discretion for Scottish Ministers to allow for other groups to be members of the scheme should the need arise, without requiring a further amendment to the regulations.

***“in paragraph 16(1)—
in head (b), for “; or” substitute “:”,
in head (c), at the end insert—
; or***

(d) the teacher is employed by any other body constituted under an Act relating to education and which the Scottish Ministers agree to treat as an employing authority for the purposes of this Section of the scheme.”

Q6. Do you agree or disagree that the proposed draft amending regulations deliver the policy objectives. If you disagree or don’t know how to answer, please explain why.

4. Equality Impact Assessment

4.1 The Public Sector Equality Duty (‘PSED’) was created by the Equality Act 2010 and is supported by the specific duties contained in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, as amended.

4.2 The PSED requires the Scottish Government to assess the impact of applying a proposed new, or revised, policy or practice. Scottish Ministers must have ‘due regard’ to the need to eliminate discrimination, advance equality of opportunity and foster good relations between people with different protected characteristics when carrying out their activities.

4.3 There are nine protected characteristics identified in the Equality Act 2010: (1) sex, (2) age, (3) disability, (4) race, (5) religion or belief, (6) gender reassignment, (7) pregnancy and maternity, (8) sexual orientation, (9) marital or civil partnership status.

4.4 An Equality Impact Assessment has been published alongside this consultation document. Our Equality Impact Assessment has determined that the proposed changes do not negatively impact on any of the protected groups. The equality duty is an ongoing duty, and we will continue to consider and amend this assessment. We would like to take this opportunity to ask stakeholders the following question in

relation to equality:

Q7. Are there any other considerations or evidence that you think should be taken into account when assessing any equality issues arising as a result of the proposed changes?

5. Next Steps

- 5.1 After the consultation has closed on 15 November 2024, responses will be fully considered before Scottish Ministers make a final decision, expected towards the end of 2024.