

Education, Children and Young People Committee

24th Meeting, 2023 (Session 6), Wednesday 27 September 2023

Subordinate legislation

1. This note provides information about the [Teachers' Superannuation and Pension Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2023](#).
2. These regulations are being considered under the negative procedure.

Timeline for Consideration

3. The regulations were laid before the Scottish Parliament on 22 June 2023.
4. They were considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meeting on [5 September 2023](#). No points were raised.
5. The regulations will be considered by the Education, Children and Young People Committee at its meeting on 27 September 2023.
6. If the Committee wishes to produce a report on these regulations, it must do so by 2 October 2023.

Purpose of the regulations

7. This instrument is to make changes to both the Teachers Superannuation (Scotland) Regulation 2005 and the Teachers' Pension Scheme (Scotland) Regulation (no.2) 2014 to introduce "phased withdrawal" for independent schools from the Scottish Teachers' Pension Scheme (STPS)
8. A copy of the Scottish Government's policy note is included at Annexe A.
9. The Policy Note states that unlike most employers in the STPS, for whom participation is mandatory, independent schools have the choice of whether to participate. Whilst the schools are free to withdraw from the scheme, if they choose to do so then all active members are immediately withdrawn, becoming deferred members of the scheme and accruing no further pension benefit.

10. The introduction of phased withdrawal will allow independent schools to cease enrolling new employees into the STPS whilst protecting the pension rights of currently employed teachers by allowing them to retain scheme membership.
11. The Policy Note states that at the request of independent schools, the proposal is aimed at helping schools manage finances by controlling pension costs and will allow some schools to remain in the STPS, which would otherwise have left, with the knowledge that, over time, pension costs would reduce through natural staff turnover.

Consultation

12. To comply with the requirements of section 10(4) of the Superannuation Act 1972 a formal policy consultation took place from 6 May 2022 to 29 July 2022. Representatives of teachers' employers and employees in Scotland, other Scottish Government interests and UK Government departments were consulted. 19 responses to the consultation were received.
13. The Policy Note states that it was clear from responses received from independent schools and their representative body that the proposals would go some way to helping schools manage finances in a challenging climate.
14. The Policy Note further notes that Scottish Ministers recognise the issues being faced and also that the option of withdrawing from the STPS is not made lightly. It also states that providing those schools with the option of withdrawing on a phased basis seems reasonable and will protect many teachers who are existing members of the scheme. Therefore, the proposals were taken forward as set out in the consultation

Impact Assessments

15. An equality impact statement in respect of the regulations was prepared and was included in the consultation document.

Financial Effects

16. The Minister for Community Wealth and Public Finance stated that no Business and Regulatory Impact Assessment (BRIA) is necessary as it is considered that the instrument has no significant financial effects on the Scottish Government, local government or on business.

Procedure

17. These regulations are being considered by the Education, Children and Young People Committee under the negative procedure.
18. This means that the regulations become law immediately, i.e. as soon as they have been laid before the Scottish Parliament. The regulations can, however, be annulled up to 40 days after this has happened.

19. Rule 10.4 of the Scottish Parliament's standing orders states that any Member of the Scottish Parliament can lodge a Parliamentary motion within the 40-day time period seeking an annulment of regulations.
20. All regulations considered under the negative procedure are scrutinised by both the Delegated Powers and Law Reform Committee (on various technical grounds) and by a lead committee (on policy grounds).
21. If a motion to annul is lodged, the lead committee will consider this and then hold a vote. If the motion is disagreed to, then the regulations will remain in their current form.
22. If, however, the majority of MSPs on the lead committee agrees the regulations should be annulled, then a further motion is lodged by the Parliamentary Bureau. This is then voted on by the whole Parliament.
23. If that is also agreed to (i.e. the majority of MSPs agrees with it), then Scottish Ministers must revoke (withdraw) the instrument. It will no longer be law and the Scottish Government must lay a new set of regulations before the Scottish Parliament.
24. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.
25. The Committee is invited to consider the instrument.

**Jane Davidson,
Committee Assistant
Education, Children and Young People Committee
20 September 2023**

Annexe A**POLICY NOTE****THE TEACHERS' SUPERANNUATION AND PENSION SCHEME
(MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2023****SSI 2023/190**

The above instrument was made in exercise of the powers conferred by sections 9 and 12 of, and schedule 3 of, the Superannuation Act 1972 and sections 1(1) and (2)(d) and 3 of, and paragraph 4(b) of schedule 2 of, the Public Service Pensions Act 2013. The instrument is subject to negative procedure.

The purpose of this instrument is to make changes to both the Teachers Superannuation (Scotland) Regulation 2005 and the Teachers' Pension Scheme (Scotland) Regulation (no.2) 2014 to introduce "phased withdrawal" for independent schools from the Scottish Teachers' Pension Scheme (STPS)

Policy Objectives

Unlike most employers in the STPS, for whom participation is mandatory, independent schools have the choice of whether to participate. Whilst the schools are free to withdraw from the scheme, if they choose to do so then all active members are immediately withdrawn, becoming deferred members of the scheme and accruing no further pension benefit.

The introduction of Phased withdrawal will allow independent schools to cease enrolling new employees into the STPS whilst protecting the pension rights of currently employed teachers by allowing them to retain scheme membership. At the request of independent schools, the proposal is aimed at helping schools manage finances by controlling pension costs and will allow some schools to remain in the STPS, which would otherwise have left, with the knowledge that, over time, pension costs would reduce through natural staff turnover.

Consultation

To comply with the requirements of section 10(4) of the Superannuation Act 1972 a formal policy consultation took place from 6 May 2022 and 29 July 2022. In particular, representatives of Teachers' employers and employees in Scotland, other Scottish Government interests and UK Government departments were consulted. 19 responses to the consultation were received.

As a result of that consultation, it was clear from responses received from independent schools and their representative body that the proposals would go some way to helping schools manage finances in a challenging climate. Scottish Ministers recognise the issues being faced and also that for the option of withdrawing from the STPS is not made lightly. Providing those schools with the option of withdrawing on a phased basis seems reasonable and will, importantly, protect many teachers who are existing members of the scheme.

Therefore, the proposals were taken forward as set out in the consultation.

A full list of those consulted is published on the Scottish Government website, it includes:

Association of Head Teacher and Deputes in Scotland
Pensions Regulator

Association of School and College Leaders Pinsent Masons

Association of Teachers and Lecturers Prudential

Audit Scotland

Scottish Autism

Barnardo's

Scottish Council of Independent Schools

Colleges Scotland

Convention of Scottish Local Authorities

Scottish Secondary Teachers Association East Park

Scottish Teachers' Scheme Advisory Board

Educational Institute of Scotland

Scottish Qualification Authority

ESM Schools Stòrlann Naiseanta na Gàidhlig

General Teaching Council Scotland Teachers' Pension

DENI

Government Actuary's Department

Teachers' Pension England and Wales

HM Treasury

The National Association of Schoolmasters Union of Women Teachers

KPMG

University and College Union

Midland HR

Voice the Union

Impact Assessments

An equality impact statement in respect of the Teachers' Superannuation and Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2023 was prepared and was included in the consultation document, available at: [STPS Phased Withdrawal of Independent Schools Consultation Document.pdf \(pensions.gov.scot\)](https://www.pensions.gov.scot/STPS-Phased-Withdrawal-of-Independent-Schools-Consultation-Documents.pdf)

Financial Effects

The Minister for Community Wealth and Public Finance confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as the instrument has no significant financial effects on the Scottish Government, local government or on business.

Scottish Public Pensions Agency
An Agency of the Scottish Government 20
June 2023