

This Statutory Instrument has been made in part to correct errors in S.I. 2014/2651 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2021 No. 805

PUBLIC SERVICE PENSIONS, ENGLAND AND WALES

**The Teachers' Pensions (Miscellaneous Provisions)
(Amendment) Regulations 2021**

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| <i>Made</i> - - - - | <i>6th July 2021</i> |
| <i>Laid before Parliament</i> | <i>8th July 2021</i> |
| <i>Coming into force</i> - - | <i>1st August 2021</i> |

The Secretary of State makes these Regulations in exercise of the powers in sections 9 and 12 of, and Schedule 3 to, the Superannuation Act 1972(a) (“the 1972 Act”).

The Secretary of State also makes these Regulations in exercise of the powers in sections 2 and 3 of, paragraph 4(a) of Schedule 2 to, and Schedule 3 to, the Public Service Pensions Act 2013(b) (“the 2013 Act”).

The Secretary of State has carried out the consultations referred to in section 9(5) of the 1972 Act and section 21(1) of the 2013 Act.

In accordance with section 9(1) of the 1972 Act and section 3(5) of the 2013 Act, these Regulations are made with the consent of the Treasury.

PART 1
INTRODUCTORY

Citation and commencement

1. These Regulations may be cited as the Teachers' Pensions (Miscellaneous Provisions) (Amendment) Regulations 2021 and, subject to regulation 2, come in to force on 1st August 2021.

(a) 1972 c.11; section 9 has been amended by the Pensions (Miscellaneous Provisions) Act 1990 (c.7), sections 4(1), 8(3) and (4) and 11(1), (2) and (3), by the Pension Schemes Act 1993 (c.48), Schedule 8, paragraph 7, by S.I. 2001/3649, article 107, by S.I. 2010/1158, Schedule 2, paragraph 27, and by the Public Service Pensions Act 2013 (c. 25), Schedule 8, paragraph 9; the function of “the Minister” under section 9(1) as read with section 1(1) was transferred to the Treasury by S.I. 1981/1670; section 12 has been amended by the Pensions (Miscellaneous Provisions) Act 1990 (c.7), section 10(1), (2) and (3). There are other amendments not relevant to these Regulations.

(b) 2013 c.25. There are amendments not relevant to these Regulations.

Provisions having earlier effect

2.—(1) The amendments made—

- (a) by regulation 12 as read with regulation 3 have effect as from 1st September 2010, and
- (b) by paragraph (2) have effect as from 11.59 p.m. on 31st March 2015.

(2) The Teachers’ Pensions (Miscellaneous Amendments) (No. 2) Regulations 2014(a) are amended by the substitution, for regulation 22 (which contains amendments relating to pensionable employment), of the following regulation—

“Amendment to Schedule 2 (pensionable employment)

22. In Schedule 2—

- (a) after paragraph 2(aa), insert—

“(ab) in a Multi-Academy Trust; or”; and

- (b) after paragraph 25, insert—

“**26.** Teacher employed in the Lycée Français Charles de Gaulle de Londres.”.”.

PART 2

AMENDMENTS TO REGULATIONS OF 2010

Amendments to the Teachers’ Pensions Regulations 2010

3. The Teachers’ Pensions Regulations 2010(b) are amended in accordance with the following provisions of this Part.

Amendment of regulation 7

4. In regulation 7(c) (employment not pensionable: general), in paragraph (4), after “accepted school”, insert “or an accepted phased withdrawal school”.

Amendment of regulation 8

5. In regulation 8(d) (employment not pensionable: contributions not paid), in paragraph (2), after “pensionable employment”, insert “except to the extent that regulation 27(3) covers it”.

Amendment of regulation 13

6.—(1) Amend regulation 13(e) (accepted schools) as follows.

(2) In paragraph (2)—

- (a) after “accepted”, insert “under paragraph (1)(b)”; and
- (b) in sub-paragraph (c), after “a”, insert “type A”.

(3) In paragraph (4), after “by the Secretary of State”, insert “under paragraph (1)(b)”.

(4) In paragraph (5)—

- (a) after “establishment”, insert “falling within paragraph (1)(a) or”; and
- (b) after “State” where it first appears, insert “under paragraph (1)(b)”.

(a) S.I. 2014/2651.

(b) S.I. 2010/990.

(c) Amended by S.I. 2011/614, 2012/2270, 2014/424, 2014/3255, 2020/354.

(d) Amended by S.I. 2012/2270.

(e) Amended by S.I. 2014/2651, 2019/502.

(5) In paragraph (6)—

- (a) at the start of each of sub-paragraphs (d), (e) and (f) insert “if,”;
- (b) in sub-paragraph (d), before each appearance of “guarantee”, insert “type A”.

(6) After paragraph (7) insert the following paragraph—

“(7A) In addition, where acceptance of an establishment as an accepted phased withdrawal school takes effect on an agreed date under regulation 13A(3), the establishment ceases to be an accepted school on that date.”.

(7) In paragraph (8), for “regulation “guarantee” means”, substitute “regulation “type A guarantee” means”.

Insertion of new regulation after regulation 13

7. After regulation 13 insert the following regulation—

“Accepted phased withdrawal schools

13A.—(1) An establishment is an accepted phased withdrawal school if the Secretary of State accepts it for the purpose of this regulation by giving its proprietor a written notice specifying the date on which it becomes an accepted phased withdrawal school.

(2) An establishment may be so accepted only if—

- (a) it is an accepted school,
- (b) its proprietor makes a written application to the Secretary of State, and
- (c) if the school is an accepted school accepted under regulation 13(1)(b), a type B guarantee is provided to the Secretary of State.

(3) An establishment, if so accepted by the Secretary of State, becomes an accepted phased withdrawal school from the date agreed between the Secretary of State and its proprietor, which must be the first day of a month after that in which the application under paragraph (2)(b) is made.

(4) An establishment so accepted by the Secretary of State ceases to be an accepted phased withdrawal school from the date specified in a written notice given to its proprietor by the Secretary of State.

(5) A notice under paragraph (4) may be given—

- (a) if the proprietor of the establishment makes a written application to the Secretary of State,
- (b) if the proprietor fails to comply with any provision of these Regulations or of TSAVCR 1994,
- (c) if, where a type B guarantee was previously provided to the Secretary of State, either the type B guarantee lapses or, because of a change in circumstances, the Secretary of State considers that the type B guarantee is insufficient,
- (d) if, where the proprietor of the establishment is an individual or a number of individuals, that individual or one of those individuals is an undischarged bankrupt or is the subject of a bankruptcy restrictions order or an interim order under Schedule 4A to IA 1986, or
- (e) if, where the proprietor of the establishment is a company—
 - (i) a proposal for a voluntary arrangement has been made or approved in relation to the company under Part 1 of IA 1986,
 - (ii) an administration application has been made or a notice of intention to appoint an administrator has been filed with the court or an administrator has been appointed for the company under Schedule B1 to IA 1986,
 - (iii) a receiver, manager or administrative receiver has been appointed for the company under Part 3 of IA 1986,

- (iv) a winding-up petition has been presented, a winding-up order has been made or a resolution for voluntary winding-up has been passed in relation to the company under Part 4 or 5 of IA 1986, or
 - (v) notice has been received that the company may be struck off the register of companies or an application to strike it off has been made under Part 31 of CA 2006.
- (6) The proprietor of an accepted phased withdrawal school must immediately give written notice to the Secretary of State of any change in proprietor or upon the occurrence of any of the events mentioned in paragraph (5)(d) or (e).
- (7) Where an establishment ceases to be an accepted phased withdrawal school—
- (a) it does not in consequence become an accepted school, but
 - (b) sub-paragraph (a) does not prevent a separate application being made for the establishment to be an accepted school under regulation 13.
- (8) For the purposes of this regulation a type B guarantee may be provided anew or may be provided by the continuation or variation of a type A guarantee under regulation 13.
- (9) In this regulation—
- “accepted phased withdrawal teacher” means—
- (a) as from the date agreed under paragraph (3), a person who, immediately before that date, is in pensionable employment at the establishment under Part 1 of Schedule 2 and is entitled to salary paid in full as indicated in regulation 7(2)(a),
 - (b) as from the date immediately after the end of a period of leave, which—
 - (i) is of a type specified in regulation 7(2)(b), and
 - (ii) has a continuous duration no longer than five years,
 a person who, immediately before the date agreed under paragraph (3), is in pensionable employment at the establishment but, because of that leave, is not so entitled,
 - (c) as from the date immediately after the end of a period of leave, which—
 - (i) is not of a type specified in regulation 7(2)(b), and
 - (ii) has a continuous duration no longer than five years,
 a person who, immediately before the date agreed under paragraph (3), is excluded, only in consequence of that leave, from counting as being in pensionable employment at the establishment, and
 - (d) as from the date immediately after the ending of the period of effect of an election under regulation 9, beginning before the date agreed under paragraph (3), a person who during that period is in employment at the establishment that, only because of the application of regulation 7(3) to that person, is excluded from counting as pensionable employment at the establishment;
- “type B guarantee” means a bond, guarantee or indemnity in a form and amount, and provided by a person, approved by the Secretary of State in respect of sums due, under these Regulations and TSAVCR 1994, from the proprietor and from any other person responsible for employment at the establishment of accepted phased withdrawal teachers, in relation to pensions—
- (a) already payable by the establishment under these Regulations; and
 - (b) payable in respect of the pensionable employment of each accepted phased withdrawal teacher at the establishment under Part 1 of Schedule 2.”.

Amendment of regulation 27

8. At the end of regulation 27 (employers’ contributions) add the following paragraph—

“(3) The deemed exclusion by paragraph (2) of regulation 8 of periods covered by that paragraph from pensionable employment does not apply to this regulation or to Chapter 4 of this Part.”.

Amendment of Schedule 1

9. In Schedule 1(a) (glossary of expressions), after the expression “accepted employer” in the left hand column and its meaning “see regulation 14F” in the corresponding right hand column, insert the expressions in the left hand column and the meanings in the corresponding right hand column below—

| | |
|------------------------------------|---|
| accepted phased withdrawal school | see regulation 13A (accepted phased withdrawal schools) |
| accepted phased withdrawal teacher | see regulation 13A |

Amendment of Schedule 2, Part 1

10. In Schedule 2, Part 1(b) (employments pensionable without election)—

(a) in each of paragraphs 3 and 5, after “or”, insert “by”; and

(b) after paragraph 3 insert the following paragraph—

“**3A.** Accepted phased withdrawal teacher employed by the proprietor of, or by anyone else concerned in the management of, an accepted phased withdrawal school.”.

Amendment of Schedule 4

11.—(1) Amend Schedule 4(c) (contributions for additional pensions) as follows.

(2) In paragraph 11(3)(a), for “the AP beneficiary’s death grant nominee or personal estate”, substitute “each person who in consequence of that death would be entitled to receive payment were the monthly payments a death grant falling within regulation 82”.

(3) In paragraph 11(3)(b), for “the AP beneficiary’s death grant nominee or personal estate is not to”, substitute “no person covered by paragraph (a) is to”.

(4) In paragraph 11(4), for “the AP beneficiary’s death grant nominee or personal estate”, substitute “each person covered by sub-paragraph (3)(a)”.

Amendment of Schedule 5

12.—(1) Amend Schedule 5(d) (family benefit contributions) as follows.

(2) In paragraph 3(a)(ii), after “spouse”, insert “or (in the case of a woman who died on or after 5th December 2005) a male civil partner or a male spouse”.

(3) In paragraph 3(b), for “woman with a male spouse or a male civil partner”, substitute “woman (with a male spouse) who died before 5th December 2005”.

Amendment of Schedule 8

13.—(1) Amend Schedule 8(e) (adult pension qualification service) as follows.

(2) For paragraph 1(1)(e) substitute—

(a) Amended by S.I. 2011/614, 2012/2270, 2014/424, 2014/2651, 2014/3255, 2019/502, 2019/1134, 2020/354.

(b) Amended by S.I. 2012/673, 2012/979, 2014/424, 2014/2651 (as read with regulation 2), 2015/643, 2019/502, 2019/1027.

(c) Amended by S.I. 2011/614, 2012/673, 2014/2651, 2019/1134.

(d) Amended by S.I. 2019/1134, 2019/1458.

(e) Amended by S.I. 2019/1134, 2019/1458.

- “(e) where D is a woman—
 - (i) who died on or after 5th December 2005, D’s widower or D’s male civil partner, or
 - (ii) D’s widower with pre-1988 rights.”.
- (3) For paragraph 1(2)(h) substitute—
 - “(h) any period in respect of which D has paid contributions under Schedule 5 (family benefit contributions) in a case where—
 - (i) D was married or a civil partner at a time when D’s election under paragraph 1 of that Schedule was made and D’s surviving adult is D’s widow, widower or civil partner, or
 - (ii) D had nominated a surviving nominated beneficiary by the time when that election was made and D’s surviving adult is a surviving nominated beneficiary;”.
- (4) For the heading to paragraph 2, substitute **“Pensions for widowers (other than widowers with pre-1988 rights) of female members who died before 5th December 2005”**.
- (5) In paragraph 2(1)—
 - (a) after “woman”, insert “who died before 5th December 2005”, and
 - (b) delete all the content after “pre-1988 rights”.
- (6) In paragraph 2(2)(f), delete all the content after “is a widower”.

Amendment of Schedule 9

- 14.**—(1) Amend Schedule 9(a) (family benefit service) as follows.
- (2) For the heading to paragraph 3, substitute **“Pensions for widowers (other than widowers with pre-1988 rights) of female members who died before 5th December 2005”**.
- (3) In paragraph 3(1)—
 - (a) after “woman”, insert “who died before 5th December 2005”, and
 - (b) delete all the content after “pre-1988 rights”.
- (4) In paragraph 3(2)(a), for all the content after “(e) of”, substitute “Schedule 8 (Pensions for widowers (other than widowers with pre-1988 rights) of female members who died before 5th December 2005)”.

PART 3

AMENDMENTS TO REGULATIONS OF 2014

Amendments to the Teachers’ Pension Scheme Regulations 2014

15. The Teachers’ Pension Scheme Regulations 2014(b) are amended in accordance with the following provisions of this Part.

Amendment of regulation 24

- 16.**—(1) Amend regulation 24 (service not pensionable unless members’ contributions are paid) as follows.
- (2) Insert a semicolon at the end of paragraph (1)(b).

(a) Amended by S.I. 2019/1134, 2019/1458.
 (b) S.I. 2014/512.

(3) After paragraph (1)(b), insert “but this is subject to paragraph (3)” as full-out text as part of paragraph (1).

(4) Insert a semicolon at the end of paragraph (2)(b).

(5) After paragraph (2)(b), insert “but this is subject to paragraph (3)” as full-out text as part of paragraph (2).

(6) After paragraph (2) insert the following paragraph—

“(3) A period within the previous provisions of this regulation counts as a period of pensionable service to the extent that regulation 192(2) covers it.”.

Amendment of regulation 192

17.—(1) Amend regulation 192(a) (employers’ contributions) as follows.

(2) For “In respect of each pay period” substitute “—(1) In respect of each pay period”.

(3) After paragraph (1) as so established, insert the following paragraph—

“(2) Exclusion from pensionable service for any period under paragraphs (1) and (2) of regulation 24 does not apply to paragraph (1) or to Chapter 5 of this Part.”.

Amendment of Schedule 1, Part 1

18.—(1) Amend Part 1(b) (general) of Schedule 1 (eligible employment) as follows.

(2) In paragraph 1, in the definition of “guarantee”, insert “type A” within the quotation marks after “guarantee”.

(3) In paragraph 2(2)(c), after “guarantee” insert “type A”

(4) In paragraph 2(6)(d) insert “type A”—

(a) after “a guarantee”;

(b) after “either the guarantee”; and

(c) after “that the guarantee”.

(5) After paragraph 2(7) insert the following sub-paragraph—

“(8) In addition, where acceptance of an establishment as an accepted phased withdrawal school takes effect on an agreed date under paragraph 2A, the establishment ceases to be an accepted school on that date.”.

(6) After paragraph 2 insert the following paragraph—

“Accepted phased withdrawal school

2A.—(1) An establishment is an accepted phased withdrawal school if the Secretary of State accepts it for the purpose of this paragraph by giving its proprietor a written notice specifying the date on which it becomes an accepted phased withdrawal school.

(2) An establishment may be so accepted only if—

(a) it is an accepted school,

(b) its proprietor makes a written application to the Secretary of State, and

(c) if the school is an accepted school accepted under paragraph 2(1)(b), a guarantee type B is provided to the Secretary of State.

(3) An establishment, if so accepted by the Secretary of State, becomes an accepted phased withdrawal school from the date agreed between the Secretary of State and its proprietor, which must be the first day of a month after the month in which the application under sub-paragraph (2)(b) is made.

(a) Substituted by S.I. 2014/2652.

(b) Amended by S.I. 2017/1084, 2019/502.

(4) An establishment so accepted by the Secretary of State ceases to be an accepted phased withdrawal school from the date specified in a written notice given to its proprietor by the Secretary of State.

(5) A notice under sub-paragraph (4) may be given if—

- (a) the proprietor of the establishment makes a written application to the Secretary of State,
- (b) the proprietor fails to comply with any provision of these Regulations or of TSAVCR 1994,
- (c) where a guarantee type B was previously provided to the Secretary of State, either the guarantee type B lapses or, because of a change in circumstances, the Secretary of State considers that the guarantee type B is insufficient,
- (d) if, where the proprietor of the establishment is an individual or a number of individuals, that individual or one of those individuals is an undischarged bankrupt or is the subject of a bankruptcy restrictions order or an interim order under Schedule 4A to IA 1986, or
- (e) if, where the proprietor of the establishment is a company—
 - (i) a proposal for a voluntary arrangement has been made or approved in relation to the company under Part 1 of IA 1986,
 - (ii) an administration application has been made or a notice of intention to appoint an administrator has been filed with the court or an administrator has been appointed for the company under Schedule B1 to IA 1986,
 - (iii) a receiver, manager or administrative receiver has been appointed for the company under Part 3 of IA 1986,
 - (iv) a winding-up petition has been presented, a winding-up order has been made or a resolution for voluntary winding-up has been passed in relation to the company under Part 4 or 5 of IA 1986, or
 - (v) notice has been received that the company may be struck off the register of companies or an application to strike it off has been made under Part 31 of CA 2006.

(6) The proprietor of an accepted phased withdrawal school must immediately give written notice to the Secretary of State if—

- (a) there is a change of proprietor; or
- (b) any of the events mentioned in sub-paragraph (5)(d) or (e) occurs.

(7) Where an establishment ceases to be an accepted phased withdrawal school—

- (a) it does not in consequence become an accepted school, but
- (b) paragraph (a) does not prevent a separate application being made for the establishment to be an accepted school under paragraph 2.

(8) For the purposes of this paragraph a guarantee type B may be provided anew or may be provided by the continuation or variation of a guarantee type A under paragraph 2.

(9) In this paragraph—

“accepted phased withdrawal member” means—

- (a) as from the date agreed under paragraph (3), a person who, immediately before that date, is in pensionable service at the establishment and is entitled to salary paid in full as indicated in regulation 23(1)(a),
- (b) as from the date immediately after the end of a period of leave, which—
 - (i) falls within regulation 23(1)(b) or (c), and
 - (ii) has a continuous duration no longer than five years,

a person who, immediately before the date agreed under paragraph (3), is in pensionable service at the establishment but, because of that leave, is not so entitled,

(c) as from the date immediately after the ending of a period of family leave or sick leave which—

(i) falls within regulation 23(2), and

(ii) has a continuous duration no longer than five years,

a person who, immediately before the date agreed under paragraph (3), is not in pensionable service at the establishment but only because of the application of regulation 23(2) to that person,

(d) as from the date immediately after the ending of the period of effect of an opt-out under regulation 28, subject to an opt-out notice received by the scheme manager under that regulation before the date agreed under paragraph (3), a person who is not in pensionable employment at the establishment but only because of the application of regulation 28 to that person, and

(e) as from the date immediately after the ending of the period of effect of an opt-out under regulation 31, subject to an opt-out notice received by the scheme manager under that regulation before the date agreed under paragraph (3), a person who is not in pensionable employment at the establishment but only because of the application of regulation 31 to that person;

“guarantee type B” means a bond, guarantee or indemnity in a form and amount, and provided by a person, approved by the scheme manager in respect of sums due, under these Regulations and TSAVCR 1994, from the proprietor and from any other person responsible for employment at the establishment of accepted phased withdrawal members, in relation to pensions—

(a) already payable by the establishment under these Regulations; and

(b) payable in respect of the pensionable service of each accepted phased withdrawal member at the establishment.”.

Amendment of Schedule 1, Part 2

19. In Schedule 1, Part 2(a) (service pensionable without election)—

(a) in each of paragraphs 11 and 13, after “or”, insert “by”; and

(b) after paragraph 11 insert the following paragraph—

“**11A.** Accepted phased withdrawal member employed by the proprietor of, or by anyone else concerned in the management of, an accepted phased withdrawal school.”.

Amendment of Schedule 3

20. In Schedule 3(b) (transitional provisions), in each of—

(a) paragraph 7(b) within Part 2 (exceptions for full protection members), and

(b) paragraph 14(b) within Part 3 (exceptions for tapered protection members),

after “a pension” insert “in respect of all P’s pensionable service under the existing scheme”.

(a) Amended by S.I. 2014/2652, 2015/643, 2019/502, 2019/1027.

(b) Parts 2 and 3 were amended by S.I. 2014/2652.

6th July 2021

Nick Gibb
Minister of State
Department for Education

We consent to the making of these Regulations

5th July 2021

David Rutley
Maggie Throup
Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations contain preliminary provisions (Part 1) and amend the following sets of Regulations, which extend to England and Wales—

- The Teachers' Pensions Regulations 2010 (amended in Part 2), which provide primarily for teachers' pensions based on final salaries;
- The Teachers' Pension Scheme Regulations 2014 (amended in Part 3), which provide primarily for teachers' pensions based on career average earnings.

Within Part 1 they also make a retrospective rectifying amendment to previous amending regulations relating to the 2010 Regulations (regulation 2(2) as read with regulation 2(1)(b)). Section 12(1) of the Superannuation Act 1972 provides authority for provisions to take effect as from a date earlier than the making of these Regulations, an authority also relevant to regulation 12.

Within Part 2 –

- regulation 3 introduces the other regulations;
- regulations 4, 6, 7, 9 and 10 provide scope for any accepted school (a category almost confined to independent schools) that participates in the pension arrangements covered by the 2010 Regulations, which previously had to cover all teaching staff, to limit coverage to staff employed, or absent on limited grounds, as at a time given to it by the Secretary of State, following application on behalf of the school;
- regulations 5 and 8 amend provisions relating to what counts as pensionable service when contributions are outstanding;
- regulation 11 corrects a previous mismatch in terminology;
- regulations 12 to 14 adjust pension rights among classes of survivors of relationships so that, for example, the widower of a deceased female teacher who died on or after 5 December 2005, i.e. the date when same-sex civil partnerships were first recognised, can claim for service back to 1 April 1972 on the same basis as the survivor of such a partnership; the retroaction in regulation 12 (see regulation 2(1)(a)) is included so that pension elements attributable to action on the part of the deceased also cover action dating back to when the 2010 Regulations came into force.

Within Part 3 –

- regulation 15 introduces the other regulations;
- regulations 16 and 17 amend provisions relating to what counts as pensionable service when contributions are outstanding;
- regulations 18 and 19 provide scope for any accepted school that participates in pension arrangements covered by the 2014 Regulations, which previously had to cover all teaching staff, to limit coverage to staff employed, or absent on limited grounds, as at a time given to it by the Secretary of State, following application on behalf of the school;

- regulation 20 makes amendments to transitional provisions for teachers moving into the pension arrangements covered by the 2014 Regulations.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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