Amendments to the Teachers' Pension Scheme regulations

November 2023 (original document 2019)

Introduction

The Teachers' Pensions etc. (Amendment) Regulations 2019 (Statutory Instrument 2019/1134) were laid before the Houses of Parliament on 17 July 2019. These generally came into force on 1 September 2019, but in certain cases, the amendments have retrospective effect.

There have been two Supreme Court decisions that have ruled certain regulations to be discriminatory and not in compliance with overriding equalities legislation. This has led to a need for all public service pension schemes to change their provisions and for the governing regulations to be amended.
There are also some minor amendments to the Teachers' Additional Voluntary Contribution Scheme, and the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 2015.

Amendments and updates

Provision for pension benefits payable to a surviving same-sex civil partner or spouse to reflect those payable to a widow from an opposite sex marriage

The Teachers' Pensions regulations have been amended so that same-sex couples, whether married or in a civil partnership, will have the same survivor pension benefits as those provided to the widow of a male Scheme member. This follows the Supreme Court judgment in the case of Walker v Innospec Ltd, which requires those in a same-sex relationship be treated equally to those in an opposite sex relationship. Teachers' Pensions has already amended the processing of benefits to reflect the court's decision, but the change to the regulations embodies this in statute.

As a consequence of the above, the Teachers' Pension Scheme will pay a pension to a survivor of a same-sex marriage or civil partnership based on pensionable service from 1 April 1972, rather than 6 April 1988 as was originally the case. If the same-sex marriage or civil partnership took place after the member had left pensionable employment, it is service from 6 April 1978 that counts for adult survivor benefits. A surviving partner of a member who was in a same-sex marriage or civil partnership, who believes that they are affected but has not had their survivor benefits amended, should contact Teachers' Pensions to discuss further.

Any members in a same-sex marriage or civil partnership who paid additional contributions to purchase family benefits based on pensionable service prior to 6 April 1988, will need to have the additional contributions refunded. Those affected should contact Teachers' Pensions to discuss.

Opposite sex civil partnerships to be treated the same as opposite sex marriages

The issue of pension rights in opposite sex civil partnerships was not considered as part of this change to the regulations. The government is, however, legislating separately to introduce opposite sex civil partnerships and has recently announced that adult survivor benefits will reflect the provisions that apply to opposite sex marriages.

In summary this is as follows;

- Benefits for a surviving male civil partner of a female Scheme member – pensionable service accrued from 6 April 1972, unless the civil partnership is formed after the member has left active service in which case pensionable service accrued from 6 April 1978. Different rules apply for female teachers who died before 5 December 2005. In those instances, the survivor will have received or be in receipt of a pension based on the female teachers' service from 6 April 1988.
- Benefits for a surviving female civil partner of a male Scheme member – pensionable service from 1 April 1972, unless the civil partnership is formed after the member has left active service in which case pensionable service accrued from 6 April 1978.

Those with a dependant or interdependen partner but not in a marriage or a civil partnership ("surviving qualifying partners") - No requirement for a nomination form for pension benefits.

Following a court ruling in the case of Brewster v Northern Ireland Local Government Officers' Superannuation Committee, a cohabiting partner who is not in a marriage or a civil partnership (a "surviving qualifying partner") will be eligible to receive survivor benefits from the Teachers' Pension Scheme without having been nominated by the member, provided they meet the remaining qualifying criteria.

Members in a qualifying relationship should note that;

- a nomination for a surviving beneficiary (e.g. a dependent brother or sister) falls away if the criteria for surviving qualifying partner benefits are met, and
- an election to cover pensionable service prior to 1 January 2007 (the date that unmarried partner benefits were provided automatically), needs to be made within 6 months of becoming a qualifying partner.

For more information on surviving qualifying partners and who qualifies, please refer to the information on the Teachers' Pensions website.

Pension Protection Lump Sum Death Benefits

An amendment has been made to clarify that members, who are subject to Lifetime Allowance charges, are able to elect for a "Pension Protection Lump Sum Death Benefit".

This relates to a tax issue which will not affect many members as most individuals in the Teachers' Pension Scheme will have scheme benefits which are well within their Lifetime Allowance.
High earners, who are about to retire and may be in the position of exceeding the Lifetime Allowance, may wish to opt for a Pension Protection Lump Sum. The advantage to a surviving beneficiary is that if the member dies before the age of 75 and the value of the supplementary death grant exceeds the Lifetime Allowance, in whole or in part, the Pension Protection Lump Sum Death Benefit will not be subject to tax (as the tax rules currently stand). In these circumstances, the member may opt to have the supplementary death grant processed in this way.

Individuals in this position are advised to take specialist financial advice as other aspects such as inheritance tax may also need to be considered. The beneficiary may or may not be better off depending on individual circumstances.

A member intending to take this option at retirement must write to Teachers' Pensions to request that any supplementary death grant be treated as a Pension Protection Lump Sum.

Ill-health Retirement – medical evidence

An amendment has been made to the regulations to clarify the suitability of medical evidence to support certain Ill-health Retirement applications. The amendment confirms the long-term policy intention that the medical report used to demonstrate eligibility is recent – dated within 18 months of the application. This should assist members in understanding what evidence is suitable to support an application.