

# Consideration of subordinate legislation by the Education, Children and Young People Committee

1. This note provides information about [The Teachers' Pension Scheme \(Scotland\) Amendment Regulations 2022](#).
2. These regulations may also be referred to by their Scottish Statutory Instrument number which is SSI 2022/102.
3. These regulations are being considered under the negative procedure.

## Timeline for considering these regulations

4. These regulations were laid before the Scottish Parliament on **17 March 2022**.
5. They were considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meeting on **29 March 2022**.
6. The Delegated Powers and Law Reform Committee drew the instrument to the attention of the Parliament on reporting ground (j) for failure to lay the instruments in accordance with the laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.
7. The Delegated Powers and Law Reform Committee is nevertheless content with the explanations provided by the Scottish Government for failure to comply with the laying requirements.
8. The Delegated Powers and Law Reform Committee produced a report which is [available here](#).
9. They will be considered by the Education, Children and Young People Committee at its meeting on **20 April 2022**.
10. If the Committee wishes to produce a report on these regulations, it must do so by **9 May 2022**.

## Is there a requirement to hear evidence from the Cabinet Secretary on these regulations?

11. No.

**Purpose of the regulations**

12. The Regulations implement reforms to the Scottish Teachers' Pension Scheme under the Public Service Pensions and Judicial Offices Act ("the 2022 Act") in respect of pensions for teachers in Scotland.
13. Occupational pensions policy is reserved to the UK Government. The 2013 Act introduced reforms to public service pension schemes including those in devolved nations. The aim of the reforms was to implement the recommendations of the Independent Public Service Pensions Commission: Final Report, 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 from 1 April 2015, characterised 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.
14. Transitional protection provided for some scheme members, dependent on proximity to their NPA on 31 March 2012, to be either "fully protected" or "taper protected". Members in these categories were allowed to remain in their legacy scheme permanently, or for a set period before transitioning to the reformed CARE scheme before 31 March 2022.
15. In 2018, following a successful challenge by members of the judicial and firefighters' pension schemes, the transitional protections were found to be discriminatory against younger members by the Court of Appeal, as protection was only offered to older scheme members.
16. The UK government accepted this ruling had implications for all public service schemes that contained similar transitional protection arrangements and introduced legislation through the 2022 Act to remedy the discrimination caused by these transitional protections.
17. The purpose of this instrument, in implementation of the 2022 Act, is to amend the Teachers' Pension Scheme (Scotland) (No.2) Regulations 2014 ("the 2014 Regulations"), to close the legacy Scottish Teachers Superannuation Scheme and transition all active members to the reformed scheme on 1 April 2022.
18. A further instrument is being prepared that will complete the statutory arrangements as set out in the 2022 Act.
19. A copy of the Scottish Government's Policy Note is included in [Annexe A](#).

## Consultation

20. The policy note states that to comply with the requirements of section 21 of the 2013 Act, a public consultation was undertaken from 24 November 2021 and closed on 14 January 2022. Those consulted were all teachers' employers (including all 32 Scottish local authorities), Scottish Colleges and Higher Education establishments, Independent Schools, teachers' unions and relevant Scottish and UK Government Departments. Consultation responses outlined the Trade Unions' opposition to these changes and in particular linking normal pension age with state pension age. Six responses were received to the consultation and a summary of the consultation responses will be made available on the Scottish Public Pensions Agency's website [www.sppa.gov.uk](http://www.sppa.gov.uk).

## Impact Assessment

21. The policy note states that an initial Equality Impact Assessment has been completed and was included with the public consultation. This assessment will continue to be reviewed and updated and a full assessment will be published with the second and final instrument.
22. A fairer Scotland duty assessment was not carried out.

## Financial Impact

23. The policy note states that this policy does not impose any additional costs or reduce existing costs for business, third or public sector organisations and on that basis no Business and Regulatory Impact Assessment is required for these Regulations.

## Procedure

24. These regulations are being considered by Education, Children and Young People Committee under the negative procedure.
25. This means that the regulations become law immediately, i.e. as soon as they have been laid before the Scottish Parliament. These regulations can, however, be annulled up to 40 days after this has happened.
26. 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.
27. 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).
28. If a motion to annul is tabled, 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.

29. 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.
30. If that is also agreed to, 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.
31. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence.
32. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.
33. The Committee is invited to consider the instrument.

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**Education, Children and Young People Committee**  
**1 April 2022**

## POLICY NOTE

# THE TEACHERS' PENSION SCHEME (SCOTLAND) AMENDMENT REGULATIONS 2022

## SSI 2022/102

The above instrument was made in exercise of the powers conferred by section 1(1), (2)(d) 2(1) and 3(1) of, and Schedule 3 to, the Public Service Pensions Act 2013 ("the 2013 Act"). It is subject to negative procedure.

**The Regulations implement reforms to the Scottish Teachers' Pension Scheme under the Public Service Pensions and Judicial Offices Act ("the 2022 Act") in respect of pensions for teachers in Scotland.**

## Policy Objectives

Occupational pensions policy is reserved to the UK Government. The 2013 Act introduced reforms to public service pension schemes including those in devolved nations. The aim of the reforms was to implement the recommendations of the Independent Public Service Pensions Commission: Final Report, 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 from 1 April 2015, characterised 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.

Transitional protection provided for some scheme members, dependent on proximity to their NPA on 31 March 2012, to be either "fully protected" or "taper protected". Members in these categories were allowed to remain in their legacy scheme permanently, or for a set period before transitioning to the reformed CARE scheme before 31 March 2022.

In 2018, following a successful challenge by members of the judicial and firefighters' pension schemes, the transitional protections were found to be discriminatory against younger members by the Court of Appeal, as protection was only offered to older scheme members.

The UK government accepted this ruling had implications for all public service schemes that contained similar transitional protection arrangements and introduced legislation through the 2022 Act to remedy the discrimination caused by

these transitional protections.

The purpose of this instrument, in implementation of the 2022 Act, is to amend the Teachers' Pension Scheme (Scotland) (No.2) Regulations 2014 ("the 2014 Regulations"), to close the legacy Scottish Teachers Superannuation Scheme and transition all active members to the reformed scheme on 1 April 2022.

A further instrument is being prepared that will complete the statutory arrangements as set out in the 2022 Act.

## The Amendments

This instrument achieves the purposes of closing the legacy scheme at 31 March 2022, moving all active members to the 2015 Scheme on 1 April 2022 and ensuring that rules around additional pension elections and transfers in to the existing scheme for transitional members are applied consistently to those previously classed as full protection members.

Regulation 1 establishes the title of the Regulations and the commencement date is set at 1 April 2022.

Regulation 2, paragraphs 1 to 3 ensure that Scottish Teachers' Pension Scheme Regulations follow the requirements of the 2013 Act (section 18) as amended by Section 88 of the 2022 Act. This is achieved by changing the definition of full protection member, restricting the further accrual of pensionable service in the Scottish Teachers' Superannuation Scheme (the legacy scheme) to 31 March 2022 and by setting the transition date for protected members to the 2015 Scheme to 1 April 2022.

Paragraph 4 ensures that transfer values for transitional members are dealt with consistently by accepting unreformed final salary benefits into the legacy scheme in all cases.

Paragraph 5 ensures that no election to purchase additional pension through contributions arrangements can take place after 31 March 2022. This ends entitlement to purchase additional pension in the legacy scheme for all protected scheme members on that date.

## Consultation

To comply with the requirements of section 21 of the 2013 Act, a public consultation was undertaken from 24 November 2021 and closed on 14 January 2022. Those consulted were all teachers' employers (including all 32 Scottish local authorities), Scottish Colleges and Higher Education establishments, Independent Schools, teachers' unions and relevant Scottish and UK Government Departments. Consultation responses outlined the Trade Unions' opposition to these changes and in particular linking normal pension age with state pension age. Six responses were received to the consultation and a summary of the consultation responses will be made available on the Scottish

Public Pensions Agency's website [www.sppa.gov.uk](http://www.sppa.gov.uk).

## Impact Assessments

An initial Equality Impact Assessment has been completed and was included with the public consultation. This assessment will continue to be reviewed and updated and a full assessment will be published with the second and final instrument.

A fairer Scotland duty assessment was not carried out. The policy set out in this SSI is technical in nature and implements reserved UK legal changes. Accordingly, the Fairer Scotland Duty Assessment is not considered to be applicable here.

## Financial Effects

This policy introduces further reform to the pension scheme for teachers in Scotland, following court judgment and public consultation. This policy does not impose any additional costs or reduce existing costs for business, third or public sector organisations and on that basis no Business and Regulatory Impact Assessment is required for these Regulations.

Scottish Public Pensions Agency

An Agency of the Scottish Government

17 March 2022