

Teachers' Pension Scheme Transitional Protection Regulations Consultation

Response of the Association of School and College Leaders

A. Introduction

1. The Association of School and College Leaders (ASCL) is a trade union and professional association representing over 24,000 education system leaders, heads, principals, deputies, vice-principals, assistant heads, business leaders and other senior staff of state-funded and independent schools and colleges throughout the UK. ASCL members are responsible for the education of more than four million children and young people across primary, secondary, post-16 and specialist education. This places the association in a strong position to consider this issue from the viewpoint of the leaders of schools and colleges of all types.
2. ASCL welcomes the opportunity to respond to these proposals to remedy the transitional arrangements to the 2015 Teachers' Pension Scheme (TPS) regulations under the Public Sector Pensions and Judicial Offices Act 2022 (PSPJOA2022). Our response is based on the views of our members, obtained through discussions at ASCL Council, with relevant advisory groups, and prompted and unprompted emails and messages.
3. When considering the impact of any proposals on different groups, it is ASCL's policy to consider not only the nine protected characteristics included in the Equality Act 2010, but also other groups which might be disproportionately affected, particularly those who are socio-economically disadvantaged. We have answered any equality impact questions on this basis.

B. Key points

4. Over the past two years ASCL has been fully involved in the Transitional Protection Teachers' Pensions Scheme Advisory Board Sub-Group. This group includes representation from trade unions, the DfE, Government Actuary Department (GAD), Teachers' Pension Scheme (TPS) and other key stakeholders. Having made its contribution to the group, ASCL accepts that a consensus be reached so will not be reiterating all points made. ASCL appreciates that the proposals in the consultation document and associated technical regulations reflect the recommendations of the group to remedy the age discrimination that was identified in the McCloud Court of Appeal judgement.

C. Answers to specific questions

Question 1. Do you agree with the policy approach that is proposed in the consultation document for the TPS to address the identified discrimination with the transitional protection arrangements?

5. Yes. The proposals for the scheme-specific regulations address the transitional discrimination by locating the tenets of PSPJOA2022 within a fresh set of TPS regulations. The prospective stage, as delineated in PSPJOA2022, closed the legacy scheme to all further accrual from 1 April 2022, ensuring parity thereafter within the reformed scheme. The retrospective stage proposals for legacy roll-back eliminate the identified discrimination 2015-2022. Subsequent provision of Remediable Service Statements (RSS), choice and contingent mechanisms via the Defined Choice Underpin (DCU) effectively address equality of provision. This affords some certainty of the 'no detriment' outcome to members through a defined pathway as to their pension crystallisations.

Question 2. Do the draft regulations achieve the policy aims as described in the consultation document?

6. Yes. As stated, the new draft scheme-specific regulations broadly embed the PSJOA2022. They deliver the consequential and procedural changes required as a result of PSJOA2022 through a new set of scheme regulations. ASCL has been fully involved in the Transition Protection working group since its inception. As the details have been fully discussed within the group, ASCL accepts the compromises that have sometimes had to be made to achieve this agreed consensus.

Question 3. Are any other scheme regulations required to achieve the stated policy aims?

7. No. The regulatory changes systematically address all types of member within the TPS. These include non-primary TPS eligible decision-makers such as survivors of deceased members and pension credit members. The regulations enable compensation for members for relevant losses or expenses, including contingent decisions and ill-health retirement decisions. Clearly, the consequent interaction with the tax system will be complicated and require detailed Treasury directions in relation to compensation, retrofitting and interest on any monies owed. ASCL agrees that HMRC compensates at the agreed National Savings and Investment (NS&I) Direct Saver rate where cases cannot be resolved via the tax system. Treasury directions will further need to address non-financial loss compensation.

Question 4. Are there any other comments regarding the draft regulations?

8. The arena of purchased and potential scheme flexibilities is complex. These will need to be unambiguously communicated and promoted to members, including additional service. Notwithstanding an optimal communication strategy, ASCL recognises the need for defaults as delineated.
9. ASCL is pleased that that Early Retirement Buy Out (ERBO) will be relaunched to allow renewed access for members in the reformed scheme.
10. ASCL recognises that aspects of the remedy application may require members to take independent financial advice. Not all cases would merit this, and ASCL recognises it as unworkable that this be universally provided. However, we would wish for scheme

compensation for the costs of advice in complex remedy applications such ill-health reconsiderations and surviving eligible decision-makers.

Question 5. Are there any further considerations and evidence that the Department should take into account when assessing equalities issues arising as a result of the proposed regulations?

11. As it has been presented, the 80-page Equalities Impact Assessment covers equalities issues across all protected characteristics within the Public Sector Equalities Duty (PSED) in considerable detail. The document deals comprehensively with equalities issues in a way that befits legislation itself intended to address discrimination. Consequently, we have not identified any specific issues, including socio-economic impact as in point 3 above.
12. Nevertheless, given the huge complexity of the remedy, it is possible that unintended consequences may emerge upon implementation. In particular, vulnerabilities around contingent decisions and the requirement for a level of documentation that may no longer be held may impact disproportionately.
13. We would wish to ensure due diligence in consistency of treatment across all employers in the maintained, academy and independent sectors within Managing Public Money principles. Consequently, we reserve the right to highlight any concerns should they become apparent.

Question 6. Overall, do you agree with the draft regulations included in the consultation document?

14. Yes, as outlined above.

D. Conclusion

15. ASCL emphasises the need for clarity and transparency in the mechanism whereby members exercise their DCU decision under these proposed new regulations. As this will have a fundamental impact on their income in retirement, quality of information associated with RSS throughout is paramount. Notwithstanding, as it has been presented, we support the proposals and have not identified any specific issues. However, considering the complexity of the remedy we reserve the right to highlight any concerns should they become apparent.
16. I hope that this response is of value to your consultation. ASCL is willing to be further consulted and to assist in any way that it can.

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