

**The Teachers' Pension Schemes (Amendment) Regulations**

**2019**

**Department for Education**

**25 June 2019**

1. The NASUWT welcomes the opportunity to comment on the Department for Education (DfE)'s consultation on the Teachers' Pension Scheme (TPS) (Amendment) Regulations 2019.
2. The NASUWT is the teachers' union.

**GENERAL COMMENTS**

3. The NASUWT welcomes the DfE's intention to amend the TPS Regulations 2014 to ensure that civil partners and same sex spouses will have the same survivor pension rights as widows.
4. The equalisation of same sex survivors' benefits with those of widows is a long-standing NASUWT policy aim and the Union has campaigned on this issue for many years. The NASUWT welcomes the ending of the injustice of discriminatory pension entitlements from which lesbian, gay and bisexual (LGB) teachers have suffered.
5. The NASUWT also welcomes the DfE's intention to remove the requirement to nominate an unmarried partner for survivor benefits where the remaining qualifying conditions are met.

6. The NASUWT appreciates that the DfE is not currently consulting on the issue of pension benefits for male survivors of opposite sex marriages (widowers' pension benefits). However, it would be remiss of the NASUWT not to address this in the Union's consultation response. It is fundamentally unfair, and potentially discriminatory towards women teachers in heterosexual marriages, for widowers' benefits to derive only from accrued service from 1988 onwards.
7. In order to fully complete the reforms to the TPS to ensure that its provisions for adult survivors are not discriminatory, it is necessary to treat accrual from 1972 onwards as contributing towards widowers' pension benefits.
8. The NASUWT notes that the consultation states that the Government will 'respond in due course' on the issue of male survivors of opposite-sex marriages. The NASUWT believes the Government's response to be long overdue and also that its eventual response should confirm that accrual from 1972 onwards will contribute towards widowers' pension benefits. To do otherwise would continue a form of unacceptable discrimination towards women teachers and would make public service pension schemes vulnerable to further legal action.
9. The continuation of less favourable pensions for widowers means that in circumstances where a trans woman legally changes her gender and marries a man, gender reassignment could result in the pension paid to the woman's opposite sex surviving partner being lower than the pension paid to a same sex surviving partner.
10. The NASUWT does not accept the DfE's claim that marriage is a protected characteristic which is not relevant to the Public Sector Equality Duty (PSED). It is clearly the case that for women, opposite-sex marriage potentially confers a lower entitlement to a pension for a surviving partner than a same-sex marriage.

11. The NASUWT therefore draws the DfE's attention to continuing discriminatory provision in the TPS, which the Union believes the Government should eradicate.
12. Moreover, if civil partners/spouses have paid for their pre-1988 service to contribute towards their partner's survivor pension, this should be refunded.

### **SPECIFIC COMMENTS**

13. The NASUWT accepts that the DfE's proposed revisions to the TPS Regulations are intended to translate DfE policy over entitlements for surviving civil partners and same-sex spouses into the Regulations. The Regulations are also intended to remove the requirement to nominate an unmarried partner for survivor benefits, where the remaining qualifying conditions for survivor benefits are met.
14. From the NASUWT's perspective, the revised Regulations should not distinguish between a woman's male or female spouse, because both categories should have pre-1988 rights. Nonetheless, the NASUWT understands that this is not the DfE's intention, which is rather to ensure that current Government policy is captured by the revised Regulations.
15. The NASUWT welcomes the additional Regulation to make it clear to TPS members that they have an option to elect for any death grant to be paid as a Pension Protection Lump Sum Death Benefit.
16. The NASUWT is not convinced that there is a need to impose a limitation of eighteen months on the date of a medical report which is used to demonstrate eligibility for an ill-health award, and the application deadline for the ill-health award. However, if a limit is to be applied, the NASUWT agrees that eighteen months is reasonable and that it is also reasonable that an ill-health award can be backdated by up to two years.

17. The NASUWT welcomes the proposal to amend the 2010 Regulations to extend the list of circumstances in which an application for ill-health retirement can be accepted on in-service terms, to bring these in line with the 2014 Regulations.

18. The NASUWT signals to the DfE the Union's wider concern that ill-health pension provision does not necessarily operate in accordance with the intention of the 2007 reforms. Specifically, it is a key NASUWT concern that teachers who are unable to teach because of illness, are having to demonstrate permanent incapacity to age 67 or even 68. In addition, teachers who are unfit to carry out classroom teaching, but may be capable of carrying out some work in the educational field such as tutoring, are unable to access an ill-health pension. The NASUWT intends to bring proposals for the reform of teachers' ill-health provision to the DfE in due course.

Chris Keates (Ms)

**General Secretary**

For further information on the Union's response, please contact:

Dave Wilkinson  
National Negotiating Official  
NASUWT  
Hillscourt Education Centre  
Rose Hill  
Rednal  
Birmingham  
B45 8RS

0121 453 6150

[www.nasuwt.org.uk](http://www.nasuwt.org.uk)

[dave.wilkinson@mail.nasuwt.org.uk](mailto:dave.wilkinson@mail.nasuwt.org.uk)