

Briefing

Independent schools pensions: considerations for phased withdrawal

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In November 2020, the Department for Education (DfE) published its long awaited [response to the consultation on phased withdrawal](#) (also known as “Mixed Economy”) from the Teachers’ Pension Scheme (TPS).

At a high level, phased withdrawal allows an independent school to retain TPS for existing teaching staff but to provide alternative pension arrangements for new teaching hires. The consultation response indicates that regulations will be introduced so phased withdrawal is available for independent schools from spring 2021.

In this briefing note, we explore what the phased withdrawal option might mean for independent schools, noting that there will be further detail to digest on this option in due course.

Background

In 2018, the government announced that the contribution rate required from schools who participate in the TPS would increase from 16.48% of pay to 23.68%. This is in addition to the contributions which are paid by teachers themselves.

These increases have created challenges for many independent schools and on 9 September 2019, the DfE launched a consultation on a proposal developed with the Independent Schools Council (ISC) and Independent School Bursars’ Association (ISBA) in order to mitigate some of these risks. The consultation closed on 3 November 2019 and the response includes some interesting reading, including the views of the 645 consultation respondents on various matters.

The consultation response remarks that around half of independent schools participate in TPS. Furthermore, teachers at independent schools account for nearly 10% of the overall active membership of TPS.

The independent school sector is therefore important for TPS overall.

In light of the contribution increases, a significant number of independent schools are considering their options around TPS, with a number having already decided to exit TPS and offer their staff an alternative arrangement.

What is 'phased withdrawal'?

Currently, an independent school decides whether or not to offer TPS to its teaching staff. If it chooses to offer TPS, then it must do so as the default for all teaching staff – this includes current teachers and new teaching hires in the future. Interestingly, where an independent school offers TPS, teachers do not need to accept the offer. This subtlety has led to many independent schools developing some alternative or "parallel" pension offerings to provide teachers with more options.

Phased withdrawal is where an independent School offering TPS "freezes" its participation at a point in time. Teachers who were employed by the school before the freeze date, would continue to have access to TPS unless they opt out of it in future, whereas new hires would not be entitled to join.

A consequence of this is that the school's membership in TPS reduces over time as teachers retire and leave. Ultimately when the last of the "pre freeze" teachers leaves employment, the school would have withdrawn its membership of TPS – i.e. the withdrawal is phased over time.

The "pre freeze" teachers who remain in TPS would continue to build up new benefits in line with the rules of the TPS.

Easements

A particularly welcome point to note in the consultation response is the protections that have been indicated for some teachers so they can re-enrol in TPS in the following circumstances:

- A teacher who had opted-out of TPS, assuming the opt-out was in place at the time that the school adopted phased withdrawal.
- A teacher in TPS who was subject to a compulsory transfer to a successor body, such as part of a merger of two schools.
- A teacher returning from non-pensionable family leave or non-pensionable sick leave of up to five years e.g. extended maternity leave.

These easements will mean that budget planning would be more complex for schools, but we would not expect the number of teachers covered by the easements to materially impact on the budgeting process.

How can phased withdrawal be used?

When phased withdrawal is available (expected spring 2021), independent schools will be given another arrow in their quiver to address pension matters. We view this as a welcome position to help independent schools manage their expenditure and risks.

However, many independent schools have already consulted or, are consulting on future pension provision and we expect they have already considered the potential use of the phased withdrawal option. If a School had discounted the option as not meeting their objectives for a pension review then this latest consultation response is unlikely to change their position. Schools in this situation should still check that their business case covers this option off.

For independent schools currently considering their options, it just adds to what is already a complex matter and we would suggest the design of any alternative option is very carefully considered relative to the unique circumstances of each school.

One particularly interesting situation to consider is where an independent school has introduced, or is introducing, an alternative pension option on a 'parallel' basis. These schools might be interested in combining the options with the parallel option becoming the default for new hires.

The ability to opt-back into TPS could also be restricted after the freeze date. A key consideration here is whether benefit spend is the same under all of the differing pension offerings. If you offer an alternative under the parallel option and phased withdrawal that has the same cost as TPS, then some of the challenges outlined below may be more manageable.

Finally, this also presents a further option for an independent school to consider their pension provision more holistically across all staff. The ability to reshape benefits for new teachers presents opportunities for considering design against support staff pensions.

Are there any disadvantages?

Offering a split level benefit structure for teachers in identical roles will likely cause challenges, and there may be concerns from Unions. This is arguably less of an issue if an alternative pension or benefit offering is based on an equivalent overall spend, but there will still be challenges to overcome. Where a split benefit is offered this will aid retention, but could cause tensions and also adds to work administering multiple arrangements. Split level benefits may also reduce the movement of teachers between schools (existing teachers that may otherwise have moved could stay due to the value placed on TPS membership), which could hamper a school's ability to take opportunities or more generally healthy staff movement.

As is noted in the consultation response, phased withdrawal is unlikely to generate a cost saving in the short-term, so for independent schools where the increased costs of TPS are unaffordable this is unlikely to change their position.

There are also future risks of TPS membership that would not be removed using this option. For example, the potential for further increases to contribution rates (in respect of existing teaching staff) following the 31 March 2020 valuation and potentially even an introduction of an exit charge mechanism.

The exit charge point is noteworthy, as following some feedback received there was a specific comment in the consultation response.

Whilst this does not give any new information, it was interesting to see mentioned the below:

"The TPS does not place an exit charge for outstanding liabilities on those employers leaving if there is a deficit. Should a change be considered in the future, all interested parties, including independent schools, would be consulted as required under legislation."

On a not unconnected note, from the wider perspective of all the stakeholders and participants of the TPS there will be some concerns as to whether phased withdrawal will serve to dilute the scheme more generally. This covers the wider position of TPS if active membership decreases and also its place as a benefit to the teaching profession. These are key risks and it will be interesting to see how these are addressed by TPS going forward.

What else was considered?

As part of the consultation a number of different options were presented by respondents. These included:

- Improving notice on contribution increases and potentially providing a period where the employer contribution rate would not rise
- Benefit downgrades
- Increased costs for teachers (rather than schools)
- Offer a defined contribution scheme for independent schools
- Offer more flexibility to schools, such as allowing partial accrual.

Whilst seemingly discounted for now, these could come onto the agenda in the future, and have been used elsewhere before.

What next?

It will be interesting to see the detail of the regulations surrounding phased withdrawal in due course, so that independent schools can consider the applications of this new option for their school and teaching staff. The process to amend the regulations can be complex, and there may be an ability to provide comments on the detail in due course.

It is worth noting that the proposed introduction date is not far away. Given that schools can introduce this change for new hires without consulting existing staff, we believe it is likely that some will want to introduce it as soon as is possible. Therefore, early sight of the details (such as the process to give notice to the DfE) is needed so schools can plan appropriately.

Equally, as is mentioned above those schools already considering their options will want to understand the impact of this. It is important to note that phased withdrawal represents just one of multiple options for independent schools, and its appropriateness will very much depend on the circumstances of a given school.

Finally, whatever decisions are made now can of course be revisited in the future and there is the possibility of further change, for example moving from phased withdrawal to full withdrawal say if circumstances change.

Please contact your Barnett Waddingham consultant if you would like to discuss any of the above topics in more detail. Alternatively get in touch via the following:

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