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Public service pensions: response to McCloud



Summary

- 1 Introduction
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Summary

Independent Public Service Pensions Commission

In June 2010, the Coalition Government set up the Independent Public Service Pensions Commission, chaired by former Labour Work and Pensions Secretary, Lord Hutton of Furness, to conduct a “fundamental, structural review of public service pension provision by Budget 2011 (HM Treasury, [Budget 2010](#), HC 61, June 2010, para 1.42).

In its final report published in March 2011, the Commission recommended replacing the existing final salary schemes with a new career average schemes and, when everything is ready, move existing members to the new schemes for future service. This was “the fairest way of spreading the effect of change across the generations” and “the quickest way of ending the in-built bias against those public service employees whose pay stays low over their career, inherent in final salary schemes.” To mitigate the risks of the costs associated with rising life expectancy, the Commission recommended linking the normal pension age to the State Pension age, except in the schemes for the uniformed services which should have a pension age of 60 ([Independent Public Service Pensions Commission – final report](#), March 2011, foreword).

2015 reforms

The Coalition Government accepted the Commission’s recommendations as the basis for negotiation with the trade unions and legislated in the [Public Service Pensions Act 2013](#) for a framework for the new schemes to be introduced for future service from 2015 (2014 for local government). Key features of the new schemes are that:

- They provide pension benefits based on career average revalued earnings (CARE) rather than final salary (s8); and
- Individuals have a normal pension age linked to their State Pension age, except for the schemes for firefighters, police and armed forces, which have a normal pension age of 60 (s10).

The Government estimates that in combination with other changes made by the Coalition Government (the switch from the RPI to the CPI for annual increases and increases in member contribution rates) the 2013 Act reforms have reduced “the forecast cost of public service pensions to the taxpayer by approximately £400 billion over 50 years.” It also argues the change from final salary to career average design has “made schemes fairer for most workers on low and middle incomes” and that the change to normal pension age “reflected improvements in life expectancy and the need to rebalance working lives with the average number of years spent in retirement.” ([HM Treasury consultation](#), July 2020, para 1.9).

Transitional arrangements

The Commission said that age discrimination legislation meant it was “not possible in practice to provide protection from change for members who are already above a certain age.” Furthermore, it argued that this should not be needed: particularly, if the ‘final salary link’ was retained (with benefits in the ‘legacy’ schemes based on salary at the time of leaving public service rather than at the point of reform), existing members in their 50s would experience fairly limited change in the benefit they would otherwise have expected to build up by normal pension age ([Final report, March 2011, para 7.34](#)).

However, on 2 November 2011, the then Chief Secretary to the Treasury, Danny Alexander, said there would be age-related transitional protection:

I have listened to the argument that those closest to retirement should not have to face any change at all. That is the approach that has been taken over the years in relation to increases to the state pension age, and I think it is fair to apply that here too [...] no one within 10 years of retirement will see any change in when they can retire or any decrease in the amount of pension they receive ([HC Deb 2 November 2011 c928](#)).

Under [section 18](#) of the 2013 Act, the legacy schemes were required to close for future service from 1 April 2015, with exceptions to be provided for in regulations. In most schemes, this meant that members within 10 years of Normal Pension Age stayed in their existing schemes (known as “transitional protection”) and members between 10 and 13.5 or 14 years of Normal Pension Age could stay in their existing schemes for a period ranging from a few months to several years after 2015 (known as “tapered protection”).

McCloud

Judges and firefighters made claims (McCloud and Sargeant respectively) in the Employment Tribunals on the grounds that the transitional protection offered to older members constituted unjustified direct age discrimination and indirect race and sex discrimination. In particular, they argued that younger members were treated less favourably than older members who were given transitional protection. In December 2018, the Court of Appeal ruled in [McCloud v Ministry of Justice](#) that the transitional provisions in the judges’ and firefighters’ pension schemes gave rise to unlawful age discrimination. The matter was remitted to the Employment Tribunal to determine a remedy for the claimants.

Consultation on remedy

In July 2019, having been denied leave to appeal, the Government accepted that the difference in treatment would be remedied across public service pension schemes, regardless of whether individuals had made a claim ([HCWS 1275 15 July 2019](#)).

In July 2020, the Government launched a [consultation](#) on its proposal to address the unlawful discrimination arising from the transitional

arrangements ([HCWS 380, 16 July 2020](#)). Eligible members would have choice whether they build up benefits in the relevant reformed or legacy scheme for the ‘remedy period’ - 1 April 2015 to 31 March 2022. The main question for the consultation was when that choice would be made. There were two options:

- an **immediate choice** - where the choice would be made as soon as possible after the policy is implemented; or
- a **deferred choice underpin**, where the choice would be made at the point benefits are drawn and, up until then, members would be treated as having been in their legacy scheme for the remedy period.

The choice would be offered to all affected members, whether or not they originally received transitional protection. ‘Eligible members’ are those in service on or before 31 March 2012 and still serving on or after 1 April 2015, including those who are currently active, deferred or retired, and those with a qualifying break in service of less than 5 years. (HM Treasury, [Public service pensions – response to consultation](#), Feb 2021).

In its [response to the consultation](#) in February 2021, the Government said it would proceed with the **deferred choice underpin**. Most respondents to the consultation had supported this option, primarily because members would have greater certainty on their benefit entitlements at the point that they made the decision.

In recognition of the administrative challenge this would represent for schemes, [the Government decided to give them](#) until October 2023 to fully deliver the retrospective changes needed for the remedy period, including resolving the cases of members who have retired or died since April 2015. The remedy period would still end on 31 March 2022 and all members would build up benefits in the reformed schemes from that date.

Meeting the costs

The [Government estimates that](#) “removing unlawful discrimination back to 2015 will cost on average around £2.5 billion for each year of the remedy period in additional future pension payments to members of those schemes in scope of this consultation. This equates to approximately £17 billion for the remedy period.” It is not yet clear to what extent the cost of the remedy will be met by members or the taxpayer. As HM Treasury officials explained to the [Public Accounts Committee](#) in April 2021, the costs “will be included in the 2016 valuation and will be borne by member costs going up.” The cost control mechanism then has to be applied. The Government has said it will waive ceilings where target costs are exceeded as it does not want “members to be in a worse position than they would have been prior to the McCloud remedy being implemented.” This means “it is ultimately members who will pay these costs, and this process will be managed through the cost control mechanism.” Trade unions and professional bodies representing public service pension scheme members have argued that members should not have to cover the cost of the remedy, which resulted from the Government’s

actions, and that benefit improvements originally expected from the 2016 valuations should be honoured.

This is discussed in more detail in [Public service pensions: cost control mechanism](#), Commons Library Briefing Paper, CBP 6971, August 2021.

Future service from April 2022

The [Government said](#) it still believed that “the reformed schemes initially introduced in 2015 provide an appropriate level of public service pension provision.” It would legislate to close the legacy schemes to future service from April 2022. From that date all members would build up benefits in the relevant reformed scheme. This would ensure that all active members were treated equally in respect of the pension scheme designs offered for future service and would all be in the reformed schemes from that date. The final salary link for members with prior service in final salary schemes would be retained (meaning that benefits in the legacy final salary schemes would be based on pensionable pay on or near their retirement rather than at the point they move to a reformed scheme).

Legislation

The [Public Service Pensions and Judicial Offices Bill \[HL\] Bill 44 2021-22](#) contains measures to address the discrimination identified in McCloud. The Bill was introduced into the House of Lords on 19 July and [scheduled](#) to have its Second Reading on 7 September. The House of Lords Library has produced a [briefing paper for Second Reading](#).

Further reading

Related Commons Library Briefing Papers include: [Public service pensions: facts and figures](#), CBP 8478, May 2021; [Public service pensions – the 2015 reforms](#), CBP 5768, July 2021; [Public service pensions: cost control mechanism](#), CBP 6971, July 2021; [Public service pension increases](#), CBP 5434, April 2021; [Judges pension schemes](#), CBP 8540, April 2021; [Local Government Pension Scheme – response to McCloud](#), CBP 9257, June 2021.

1 Introduction

1.1 Independent Public Service Pensions Commission

In June 2010, the Coalition Government set up the Independent Public Service Pensions Commission, chaired by former Labour Work and Pensions Secretary, Lord Hutton of Furness, to conduct a “fundamental, structural review of public service pension provision by Budget 2011 and consider the case for short-term savings in the Spending Review period, by September 2010.” It also announced a switch from the Retail Prices Index (RPI) to the Consumer Prices Index (CPI) as the measure of prices for indexing public service pensions in payment from April 2011.¹

The Commission’s interim report published in October 2010 recommended an increase in member contribution rates as the most effective way to make short-term savings and said there was a strong case for doing so - “to better meet the real costs of providing these pensions, the value of which has risen in recent years with most of these extra costs falling to taxpayers.”² In response, the Government announced that it would increase member contribution rates by an average of 3.2 per cent across public service schemes by 2014/15, except for the armed forces.³ Lord Hutton also said longer term structural reform was needed:

I believe we need to adopt a more prudent approach to meeting the cost of public service pensions in order to strike a fairer balance not just between current taxpayers and public service employees but also between current and future generations.⁴

1.2 Introduction of new schemes from April 2015

In its [final report](#), published in March 2011, the Commission recommended replacing the existing schemes with new ones, with pension entitlement based on career average earnings rather than final salary, and increases in the pension age: i.e. linking the normal pension age to the State Pension age

¹ HM Treasury, [Spending Review 2010](#), October 2010, para 1.94

² [Independent Public Service Pensions Commission: Final Report](#), 10 March 2011, foreword and p78-9

³ HM Treasury, [Spending Review 2010](#), October 2010, para 1.94; Library Note SN 6137 [Public service pension contributions](#) (April 2012)

⁴ [Independent Public Service Pensions Commission: interim report, October 2011, foreword](#)

in all schemes except those for the ‘uniformed services’ (armed forces, police and firefighters), which would have a pension age of 60.

The Government accepted the Commission’s recommendations as the basis for negotiation with the trade unions. It announced final proposed agreements for reform of most public service schemes over the period March to October 2012. It legislated in the [Public Service Pensions Act 2013](#) for a framework for the new schemes to be introduced for future service from 2015 (2014 for local government). Key features of the new schemes are that they provide pension benefits based on career average revalued earnings rather than final salary, and that individuals have a normal pension age linked to their State Pension age, except for the schemes for firefighters, police and armed forces, which are to have a normal pension age of 60. The detailed rules are in regulations.⁵

1.3 Transitional arrangements

The Independent Public Service Pensions Commission was asked to ensure that its recommendations protected accrued rights.⁶ In its final report, the Commission emphasised the importance of this but said “the actual nature of a member’s rights and protections has to be considered and can vary scheme by scheme, depending on scheme rules and how the scheme has been operated.”⁷ It recommended maintaining the final salary link for accrued rights:

Ex.9 Protecting accrued rights is a prerequisite for reform both to build trust and confidence and to protect current workers from a sudden change in their pension benefits or pension age. It is also right that those closest to retirement will be least affected by any changes to scheme design.

Recommendation 4: The Government must honour in full the pension promises that have been accrued by scheme members: their accrued rights. In doing so, the Commission recommends maintaining the final salary link for past service for current members.⁸

The Commission argued that existing members in their 50s should experience limited change to the benefit they would expect to build up. Special protections for members over a certain age should therefore not be necessary and were in any case not possible under age-discrimination legislation:

7.34 The Commission’s expectation is that existing members who are currently in their 50s should, by and large, experience fairly limited

⁵ See [CBP 5768](#), March 2021, section 2.2

⁶ [Independent Public Service Pensions Commission: Interim Report](#), 7 October 2010,

⁷ [Independent Public Service Pensions Commission: Final Report](#), 10 March 2011

⁸ Ibid

change to the benefit which they would otherwise have expected to accrue by the time they reach their current scheme NPA [normal pension age]. This would particularly be the case if the final salary link is protected for past service, as the Commission recommends. This limitation of impact will also extend to people below age 50, proportionate to the length of time before they reach their NPA. Therefore special protections for members over a certain age should not be necessary. Age discrimination legislation also means that it is not possible in practice to provide protection from change for members who are already above a certain age.⁹

The Government accepted the Commission's recommendation regarding the 'final salary link.' In effect, this meant benefits already built up in the final salary schemes would be calculated using the final salary when the person retires or leaves the scheme, not their salary when the scheme closed in 2015. It said that, in addition, its objective was that those with 10 years or less to pension age on 1 April 2012 should see "no change in when they retire, nor any decrease in the amount of pension they receive at their current Normal Pension Age."¹⁰

In a statement to Parliament on 2 November 2011, the then Chief Secretary to the Treasury, Danny Alexander, said that he had listened to arguments that "those closest to retirement should not have to face any change at all."¹¹ He wrote to the then TUC General Secretary, Brendan Barber, to say he had accepted that there should be transitional protection:

Over and above the costs ceiling, the Government's objective is to provide this protection to those who on 1st April 2012 are within ten years of Normal Pension Age. Schemes and Unions should discuss the fairest way of achieving this objective, and for providing some additional protection for those who are just over ten years from their Normal Pension Age. I would be willing to consider tapering of transitional protection over a further three to four years. Full account must be taken of equalities impacts and legislation, while ensuring that costs to the tax payer each and every year should not exceed the OBR forecast for public service pension costs.¹²

1.4

Public Service Pensions Act 2013

[Public Service Pensions Act 2013](#) (s20 and Sch 7) provided for benefits built up in the existing final salary schemes to be calculated by reference to the member's final salary at the point they retired or left pensionable service in

⁹ Ibid

¹⁰ HM Treasury, [Public Service Pensions – good pensions that last](#), November 2011, Foreword

¹¹ [HC Deb 2 November 2011 c927](#)

¹² [Lord Chancellor and Secretary of State for Justice v McCloud and Mostyn, Home Secretary and Welsh Ministers v Sargeant, 2018 EWCA Civ 2844](#), para 8

the new scheme (rather than at the point at which the final salary scheme was closed).¹³

Section 18 provided that no benefits could be provided under the existing schemes after 31 March 2015. Regulations could provide for exceptions for:

- (a) persons who were members of an existing scheme, or who were eligible to be members of such a scheme, immediately before 1 April 2012, and
- (b) such other persons as the regulations may specify, being persons who before that date had ceased to be members of an existing scheme or to be eligible for membership of such a scheme.

Most schemes offered two forms of transitional protection:

- Full protection - active scheme members within ten years of normal pension age on 1 April 2012 could stay in their existing scheme until retirement; and
- Tapered protection - those between 10 and 13.5 or 14 years of normal pension age on that date could stay in their existing schemes for a period ranging from a few months to several years after 2015.¹⁴

1.5

Legal challenges

The transition protection arrangements under section 18 of the 2013 Act were subject to successful legal challenges, against the judges' pension scheme (McCloud), the firefighters' pension scheme (Sargeant).

In a decision of 16 January 2017, an Employment Tribunal found in *McCloud* that, through the transitional arrangements, the Government had treated younger judges less favourably than older judges and had failed to show that such treatment was a proportionate means of achieving a legitimate aim.¹⁵

In March 2017, an Employment Tribunal found in *Sargeant* found that the transitional provisions for the Firefighters Pension Scheme 2015 were a proportionate means of achieving a legitimate aim and, accordingly, the

¹³ [Public Service Pensions Act 2013 – Explanatory Notes](#), para 257

¹⁴ All schemes have tapered protection except the Armed Forces Pension Scheme and Local Government Pension Scheme (which is outside of the scope of this consultation, apart from the issue of transfer between the LGPS and the other schemes (see paragraph A.57 below)). Tapered protection was usually for members who were from 10 to 13.5 years of their NPA on 1 April 2012, but for police and firefighters the period was between 10 and 14 years. HM Treasury, [Public Service Pensions – changes to the transitional arrangements to the 2015 schemes](#). Consultation, July 2020, para 1.12

¹⁵ [Ms V McCloud & Others v Lord Chancellor and Secretary of State for Justice, Employment Tribunal, Case No: 2201483/2015 & Others, 2202075/2015 & Others](#), November 2016

claims of direct age discrimination should fall. The claims of indirect discrimination on the grounds of sex and/or race also fell.¹⁶

Both decisions were appealed to an Employment Appeal Tribunal, which in judgements handed down in January 2018:

- Dismissed the appeal by Lord Chancellor and the Ministry of Justice against the decision of the Employment Tribunal in McCloud, holding that the Employment Tribunal had not erred in law in concluding that the Appellants had failed to justify the discriminatory effect of the transitional provisions of the New Judicial Pension Scheme.¹⁷
- Upheld the appeal by Ms Sargeant and others against the decision of the Employment Tribunal, holding that it had erred in applying, on the issue of proportionality, only the level of scrutiny described in the decisions of the European Court of Justice and in declining to apply the level of scrutiny described in the domestic case law.¹⁸

The Government appealed to the Court of Appeal which, in a judgment handed down in December 2018, held that the requirement for both judges and firefighters to be in service on or before 31 March 2012 and on or after 1 April 2015 to qualify for full protection was discriminatory on the basis of age (directly) and race and sex (indirectly):

We have found that in both the judges' and firefighters' cases the manner in which the transitional provisions have been implemented has given rise to unlawful direct age discrimination. In neither case could the admitted direct age discrimination be justified. In the Judges' case we see no error in the reasoning of Judge Williams either in his assessment of aims or means. In the firefighters' case we take the view that there were no legitimate aims and since we are satisfied that the contrary conclusion would not be open to an employment tribunal, we have made that determination ourselves and not remitted the case, save for the determination of remedy. So far as the equal pay and indirect race discrimination claims are concerned, we are satisfied that these claims are made out in the Judges' case. The only difference in the firefighters' case is that, had it been necessary (and we see no reason why it should be) we would have remitted the question whether the disadvantage was sufficiently substantial in the circumstances to establish a prima facie case of indirect discrimination, both in the equal pay and the race claims.¹⁹

¹⁶ [Ms R Sargeant and Others v London Fire and Emergency Planning Authority and Others: 2202235/2015](#), January 2018

¹⁷ [Lord Chancellor and MoJ v McCloud and Others. UKEAT/0071/17/LA](#), January 2018

¹⁸ [Ms R Sargeant and Others v London Fire and Emergency Planning Authority and Others: UKEAT/0116/17/LA](#), January 2018

¹⁹ [Lord Chancellor and Secretary of State for Justice v McCloud and Mostyn. Home Secretary and Welsh Ministers v Sargeant \[2018 ECWA Civ 2844\]](#)

The Court of Appeal remitted the matter to the Employment Tribunal to determine a remedy for the claimants.²⁰ On 18 November 2019, The Employment Tribunal issued an interim order relating to firefighters.²¹ This meant that those members of the old firefighters pension scheme, who had been transferred to the 2015 scheme, were entitled to be treated as though they had been members of the legacy scheme after 1 April 2015.²² The Fire Brigades Union described this as a “landmark victory with implications across the public sector.” It said that “the claimants, members of the 1992 and 2006 firefighters’ pension schemes, are now entitled to be treated as if they have remained members of their original pension scheme, with benefits including a retirement age of between 50 and 55.”²³ The Employment Tribunal also declared that the claimant judges in McCloud were entitled to membership of the relevant legacy scheme (the Judges Pension Scheme 1993 or the Fee-Paid Judicial Pension Scheme) from 1 April 2015.²⁴

Similar Employment Tribunal claims were made by other groups, such as police officers, prison officers and Ministry of Defence Police.²⁵ The Government said in July 2020 that it had agreed in a number of Employment Tribunal cases, that claimants should be entitled to membership of the appropriate legacy scheme.²⁶

²⁰ [HCWS1275 15 July 2019](#)

²¹ [Fire and Rescue Services National Employers Circular EMP/8/19](#), November 2019

²² Home Office, [Sargeant Factsheet](#), 20 December 2019; For the impact on the Police Pension Scheme, see Home Office, [McCloud/Sargeant factsheet](#), December 2019

²³ [FBU press release, 18 December 2019](#)

²⁴ [Judicial Pensions: Proposed response to McCloud. Consultation](#), MoJ, July 2020, Intro, para 9

²⁵ [Home Office/police pension schemes/McCloud and Sargeant factsheet; Cabinet Office: Civil superannuation account 2017-18](#), December 2018, para 1.57

²⁶ HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Consultation](#), July 2020, p8-9

2 Consultation on changes to transitional arrangements

In July 2019, the Government said that the Supreme Court had denied it permission to appeal the Court of Appeal judgement. It would therefore engage fully with the Employment Tribunal to agree how the discrimination will be remedied. The discrimination identified in McCloud would need to be addressed across public service schemes:

The court has found that those too far away from retirement age to qualify for ‘transitional protection’ have been unfairly discriminated against. As ‘transitional protection’ was offered to members of all the main public service pension schemes, the government believes that the difference in treatment will need to be remedied across all those schemes. This includes schemes for the NHS, civil service, local government, teachers, police, armed forces, judiciary and fire and rescue workers. Continuing to resist the full implications of the judgment in Court would only add to the uncertainty experienced by members.²⁷

Scheme by scheme discussions followed to determine an appropriate remedy.²⁸ On 25 March 2020, Economic Secretary to the Treasury, John Glen, said the Government would consult on proposals to allow relevant members to make a choice as to whether they accrued service in the legacy or reformed schemes for periods of relevant service, depending on what was better for them. The Government might need to consider whether previous tax years back to 2015-16 should be re-opened in relation to their pension.²⁹

HM Treasury launched its consultation in July 2020.³⁰ Its response was published in February 2021.³¹ The issues are discussed below.

²⁷ [HCWS 1275 15 July 2019](#)

²⁸ [Forces Pension Society – an update on McCloud](#), November 2018; [Civil service pensions – FAQs](#); [McCloud judgment: Teachers’ Pension Scheme FAQs – McCloud case](#); [NHS Pensions – Supreme Court ruling McCloud and Sargeant](#); [Home Office/police pension schemes/McCloud and Sargeant factsheet](#)

²⁹ [HCWS187, 25 March 2020](#)

³⁰ HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes](#), CP 253, July 2020

³¹ HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Government response to consultation](#), CP 353, Feb 2021

2.1

Individuals in scope

Around 3 million individuals are in scope of the changes relating to the removal of discrimination back to 2015. Of those, approximately 2 million will also be in scope of the changes to pension provision from 1 April 2022 onwards.³²

The Government has said that individuals will be in scope if they were a member of an affected public service pension scheme in service on or before 31 March 2012 and on or after 1 April 2015. Those who were in service on or before 31 March 2012, but who left and subsequently re-joined within 5 years would also be in scope for any service after 1 April 2015, provided their break in service meets the criteria set out in their scheme's regulations. This is in line with the existing principle that those with a qualifying break in service of less than 5 years should be deemed to have had continuous service.³³ The remedy would apply irrespective of whether they had submitted a legal claim or not, and whether they are currently an active, deferred or pensioner member.³⁴

Debate

Respondents to the consultation questioned the decision to restrict the remedy to members who had commenced relevant employment prior to April 2012. They “felt that the exclusion of members who joined after 31 March 2012 but before 1 April 2015 could lead to indirect sex, race and age discrimination as those joining later are more likely to have been women, from minority ethnic groups and younger.” However, the Government said it would not extend protection to members who could not reasonably have expected it:

The proposed introduction of the reformed schemes was well publicised at the time and was the subject of widespread media coverage. Anyone joining after 31 March 2012 would, therefore, reasonably be expected to have known that they would join or be moved to the reformed schemes. They could not reasonably have expected to remain in, or join, the legacy schemes, and nor were they subject to the unlawful discrimination identified by the Court of Appeal because transitional protection was not available to anyone who joined after 31 March 2012. Therefore, it is not appropriate to extend to them the same choice of scheme membership in respect of their service between 2015 and 2022 as will apply to those who were already in service at 31 March 2012. To do so would also increase the administrative workload and financial cost of these proposals.

³² HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes](#), July 2020, para 1.22

³³ HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Consultation](#), July 2020, para 2.18

³⁴ *Ibid.*, p3 and para 1.22

Consequently, such persons are not within scope of the proposals set out in this document.³⁵

It said that changes to pension arrangements or other terms and conditions of employment “by their nature impact differently on those who join or leave an employment at different times.” The limited impact on those protected groups was “justified in the context of its aim of removing earlier discrimination in a manner which is affordable and respects the rationale for having transitional protection at all.”³⁶

2.2 Schemes in scope

The schemes affected are the main public service pension schemes managed by the UK Government, Welsh Government and Scottish Government:

1.24 This consultation relates to the main public service pension schemes the UK Government is responsible for (the Civil Service Pension Scheme for England, Wales, Scotland and home civil servants in Northern Ireland, the Teachers’ Pension Schemes in England and Wales, the National Health Service Pension Schemes in England and Wales, the UK Armed Forces Pension Schemes, the Police Pension Schemes in England and Wales, and the Firefighters Pension Schemes in England). The Welsh Government is the responsible authority for the Firefighters Pension Scheme in Wales and the Scottish Government is the responsible authority for the Teachers’ Pension Schemes, the National Health Service Pension Schemes, the Police Pension Schemes and the Firefighters Pension Schemes in Scotland.

1.25 This consultation relates to the public service pension schemes in Scotland and Wales listed above in so far as there is a general need to address the discrimination identified by the Courts and in relation to pension provision from 1 April 2022 onwards. However, decisions regarding the details of how the discrimination identified by the Courts is addressed in those schemes are matters for Scottish and Welsh ministers.³⁷

There were separate consultations for the local government and judges’ schemes.

³⁵ Ibid, para 2.17

³⁶ HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Government response to consultation](#), CP 373, Feb 2021, para 2.5

³⁷ HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Consultation](#), July 2020

Local Government Pension Scheme

For the Local Government Pension Scheme, separate consultation was needed because the transitional protection took a different form: a [‘statutory underpin.’](#) This provided ‘protected members’ with the higher of their pension entitlement under the ‘reformed’ career average scheme and the ‘legacy’ final salary scheme. Following consultation, the government decided to extend underpin protection to younger qualifying members who joined before 31 March 2012. From April 2022, all LGPS members would accrue benefits on a career average basis, without underpin protection.³⁸ For more detail, see [Local Government Pension Scheme – response to McCloud](#), Commons Library Briefing Paper, CBP 9257, June 2021.

Judges pension schemes

A separate consultation was also needed for the judges, who were uniquely affected by a change in tax status as a result of the 2015 reforms:

The change in tax status impacted judges uniquely, as the judicial schemes were the only public service schemes not formerly tax-registered: therefore, not only were judges moved to a generally less beneficial scheme, they were also now subject to annual and lifetime limits on the tax-relieved benefits they could accrue. This was especially costly for high earners and those who had built up significant private pensions before joining the bench. In its Major Review of the Judicial Salary Structure in 2018 the Senior Salaries Review Body found that the reforms had a significant impact on judges’ overall remuneration and were the main cause of unprecedented recruitment and retention challenges in senior judicial offices.³⁹

Following consultation, the Ministry of Justice said that subject to parliamentary time and approval of the necessary legislation, it would run an options exercise in 2022. Eligible judges would be able to choose, retrospectively, whether to have accrued benefits in the 2015 pension scheme or the legacy scheme from 1 April 2015 to 2022.⁴⁰ It would also implement a reformed judicial pension scheme in April 2022. Most of its features would be in line with the principles of the 2015 scheme except that it would be non-registered for tax purposes.⁴¹ For more detail, see Commons Library Briefing Papers: [Judges’ Pension Schemes](#), CBP 8540, April 2021.

³⁸ MHCLG, [LGPS E&W amendments to the statutory underpin](#), July 2020; SPPA, [LGPS Scotland. Addressing discrimination- amendments to the statutory underpin](#), July 2020

³⁹ MoJ, [Consultation on the proposed response to McCloud](#), July 2020, p3

⁴⁰ [HCWS805 25 February 2021](#); MoJ, [Judicial Pensions – response to McCloud. Response to consultation](#), Feb 2021

⁴¹ [HCWS805 25 February 2021](#); MoJ, [A reformed Judicial Pension Scheme – response to consultation](#), Feb 2021

2.3 Why scheme members are to have a choice

The reason for allowing a choice for all affected, was that a significant number were likely to be better off in the reformed schemes, including some who had been transitionally protected and remained in the legacy schemes.⁴² This is because, although the reformed schemes mostly have higher pension ages and provide benefits based on career average rather than final salary, they generally have higher accrual rates:

2.4 While the legacy schemes are mainly based on final salary, and mostly have lower Normal Pension Ages (NPAs), the accrual rates are generally lower than in the equivalent reformed schemes. This means that pensions in the reformed schemes build up quicker than in the legacy schemes, despite being paid on an unreduced basis at later ages. Depending on the specifics of each scheme and individual circumstances, many members can therefore be better off in the reformed schemes, while others may be better off in the legacy schemes.⁴³

Those who may be better off in the reformed schemes include those without significant earnings growth after 2015 and those who choose to retire after their legacy scheme's normal pension age.⁴⁴

In addition, there were differences between schemes on which members would place different value depending on their circumstances. For example; whether there is an automatic cash lump sum in addition to regular pension payments, the normal pension age, member contribution rates, ill-health retirement rules, and entitlement to survivor benefits.⁴⁵ The Government therefore decided that it would not be right for schemes to make the decision on members' behalf.⁴⁶

2.4 When the choice should be made

The consultation proposed that affected members should have the option to choose between receiving legacy or reformed scheme benefits in respect of their service during the 'remedy period' (1 April 2015 and 31 March 2022). The Government asked for views on two possible approaches:

- **An immediate choice** – where members would decide in the year or two after the point of implementation in 2022. For many members, this would be some years prior to retirement, at a point where there is still some

⁴² Ibid, p17

⁴³ Ibid, para 2.4

⁴⁴ Ibid, para 2.8

⁴⁵ Ibid, para 2.8

⁴⁶ Ibid, para 2.11

uncertainty over the precise benefits that would accrue to them.

However, it would have the advantage of giving members clarity over scheme membership relatively quickly.

- **A ‘deferred choice underpin’** – where the decision would be deferred to retirement (or when benefits are drawn), enabling members to make a decision with fuller information about what they would receive under each scheme. Until that point, they would be treated as accruing benefits in the legacy scheme during the remedy period.⁴⁷

All members would ultimately be treated as though they were a member of either the relevant legacy or reformed scheme throughout the ‘remedy period.’ However, there were extensive pros and cons to each option with different impacts on different members, which the Government wished to explore and understand further.⁴⁸

In its response to consultation in February 2021, the Government said it had decided to proceed with the deferred choice underpin. The majority of respondents had supported this on the basis that members would have “greater certainty on their benefit entitlements at the point at which they make a decision.” Under the immediate choice option, they would have been required to base their decision on “assumptions covering many decades around factors such as their future earnings and career paths, their family circumstances, and when they expect to retire. Most respondents felt that this would place too much risk on members and could create new discrimination.”⁴⁹

Guidance for scheme members is on scheme websites. For example:

- [NHS Pension Scheme](#);
- [Civil Service Pensions](#)
- [Local Government Pension Scheme](#)
- [Armed Forces Pensions](#)
- [Teachers Pensions](#)
- [Police](#)

⁴⁷ Ibid para 2.44 and 2.52

⁴⁸ Ibid, p 4

⁴⁹ HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Government response to consultation](#), CP 373, Feb 2021

3 Issues

The consultation identified a range of issues as needing to be considered in deciding how the remedy would work. These included, for example, how to deal with the fact that there were differences between the legacy and reformed schemes in some cases, for example, relating to contribution rates, ill-health benefits and survivors' benefits. In addition, consideration needed to be given to how to approach past cases, for example, of those who had retired, divorced or died during the remedy period.⁵⁰ There would also be tax implications for some individuals resulting from changes in benefit entitlement or contributions either in 2023 or at retirement.⁵¹

3.1 Meeting the cost

Around 3 million individuals are in scope of the changes relating to the removal of discrimination back to 2015. Of those, approximately 2 million will also be in scope of the changes to pension provision from 1 April 2022 onwards.⁵²

The Government estimates that removing the unlawful discrimination will cost an additional £17 billion in pension liabilities over the next four to five decades i.e; on average around £2.5 billion for each year of the remedy period in additional future pension payments to members of those schemes in scope of this consultation, which equates to approximately £17 billion for the remedy period.⁵³ This is around 4% of the savings from the 2011 to 2015 reforms to public service pensions.⁵⁴

It is unclear to what extent these costs will be met by scheme members and taxpayers. HM Treasury officials told the Public Accounts Committee in April 2021 that:

Ultimately—this is where it gets a bit complicated—the impact of the McCloud remedy will be included in the 2016 valuation and will be borne by member costs going up. We then have to apply the cost control mechanism to the 2016 valuation. The reason why we announced that we would, in effect, waive ceilings where target

⁵⁰ Ibid, Annex A; GAD, [Technical Bulletin](#), July 2020

⁵¹ Ibid, Annex B; GAD, [Technical Bulletin](#), July 2020

⁵² HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes](#), July 2020, para 1.22

⁵³ HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes](#), July 2020

⁵⁴ [Public Service Pensions and Judicial Offices Bill. Assessment of Impacts](#), July 2021, p7

costs are exceeded is that we do not want members to be put in a worse position than they would have been prior to the McCloud remedy being implemented. Ultimately, the costs will be borne by members, but the cost control mechanism will manage that cost. The ultimate logic from that is: who pays for the costs of the waiver? That will need to be considered as part of the valuation process, which then sets the employment contribution rate.⁵⁵

Provision for the waiver of cost ceiling breaches in the 2016 valuations is in [clause 80](#) of the Public Service Pensions and Judicial Offices Bill [HL].

Trade unions and professional bodies representing public service pension scheme members have argued that members should not have to cover the cost of the remedy, which resulted from the Government's actions, and that benefit improvements originally expected from the 2016 valuations should be honoured.⁵⁶

For more detail, see [Public Service Pensions: the cost control mechanism](#), Commons Library Briefing Paper CBP 6971, 31 August 2021, section 3.3.

3.2 Implementation timetable

In its consultation response in February 2021, the Government said it recognised that there would be significant administrative challenges for schemes in implementing the remedy. For example, where individuals had already retired, the remedy could give rise to under or overpayments, changes in contributions due and/or tax liabilities. In view of this, the Government had decided to give schemes until October 2023 to fully implement retrospective changes arising from the remedy. Where possible, schemes would seek to offer reformed scheme members retiring before October 2023 a choice of legacy or reformed scheme benefits for the remedy period at retirement.⁵⁷ The remedy period will still end on 31 March 2022 and members will still be moved into the reformed schemes from 1 April 2022. This would “bring any remaining current discrimination to an end as rapidly as possible, by ensuring all members are treated equally with regard to future accrual.”⁵⁸

⁵⁵ [Public Service Pensions](#), Public Accounts Committee, 6th report 2021-22, June 2021, Summary, ch 1, para 8; [Oral evidence 22 April 2021, Q72](#)

⁵⁶ [Government backs BMA proposal to tackle unlawful discrimination](#), BMA, 5 Feb 2021; [Judges and firefighters age discrimination pension case](#), NEU, Feb 2021; [FBU, Pensions Update, 23 August 2021](#)

⁵⁷ HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Government response to consultation](#), CP 373, Feb 2021, para 2.100

⁵⁸ *Ibid*, para 2.79

3.3 Retrospective benefit changes

The Impact Assessment to the Public Service Pensions and Judicial Offices Bill describes retrospective changes to benefit entitlements as “the key novel or contentious element” of the Bill, but one that is necessary to address the discrimination.⁵⁹ Giving members a choice of which scheme benefits are most beneficial is expected to have a broadly positive impact. However, there are a small number of individuals for whom tapered protection may have been more advantageous than the choice of receiving either reformed or legacy scheme benefits for the entire remedy period. They will lose this advantage. The Government argues that this is justified on grounds that “it would not be right to continue to give members an advantage which it has been decided arose from unjustifiably discriminatory treatment on grounds of age.” Where a member has already retired, schemes will take “a proportionate approach to the recoupment of any overpaid benefits, including insuring that any overpayment can be collected over time.”⁶⁰

3.4 Members who have already retired

The Government proposed in the consultation document that members who had already retired but had been in service for part of the remedy period would be offered a choice. This would mean that:

- A member originally eligible for transitional protection could instead choose to reformed scheme benefits;
- A member originally eligible for tapered protection would be required to make a choice between legacy scheme and reformed scheme benefits; and
- A member originally not eligible for any form of protection could instead choose to receive legacy scheme benefits.⁶¹

This could result in retrospective changes to the amount of pension payments or lump sum eligibility, with overpayments needing to be recovered (either by reducing pension payments or the member making repayments over time). Interest would apply and tax adjustments might be required.⁶²

The majority of respondents who expressed a view, supported a retrospective choice to those already retired, while stressing the importance of it being an

⁵⁹ [Public Service Pensions and Judicial Offices Bill, Assessment of Impacts](#), July 2021, p10

⁶⁰ HM Treasury, [Public Service Pensions and Judicial Offices Bill: Equality Impact Assessment](#), July 2021, para 3.14-7

⁶¹ HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Consultation](#), CP 253, July 2020, Annex A – technical details

⁶² HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Government response to consultation](#), CP 373, Feb 2021, para A.2-6

informed choice. There were concerns among employers and administrators about the administrative complexities that would be involved. Some employers and member representatives, particularly from the Fire Services, argued that those affected should be given the choice as soon as possible.⁶³

In cases where a scheme member in scope of the remedy had already died, schemes would be asked to check whether a higher pension or lump sum amount would be available under the alternative scheme. Where this was the case, they would be obliged to inform relevant family members. The beneficiary would then have the option to request that the additional, alternative amount is paid. Additional expenses incurred (for example, from reopening a probate application) would be reimbursed, although this would not extend to inheritance tax payments that might be due as a result. Where there were separate households containing family members potentially eligible for survivor pensions, the choice will fall to the late member's surviving spouse or partner. Child pensions already in payment would be honoured.⁶⁴

Immediate detriment cases

Some people have already received 'an immediate detriment' remedy for the McCloud discrimination. The Government intends that this is not undermined – for example, by giving them a second opportunity to make an election. This is provided for in [clause 28](#) of the Bill. Clause 28 (2) enables scheme regulations to be made to put such individuals, as far as possible, in the position they would have been in had there been no discrimination.⁶⁵

The Fire Brigades Union has issued legal proceedings in the High Court in an attempt to force Fire and Rescue Authorities to pay its retired members the pension they are entitled to. It says employers have indicated that they are waiting for government guidance, when none is required because the Courts have "made it plain what they must do." Date for a summary judgement hearing has been set for 20-21 October 2021.⁶⁶

3.5

Member contributions

Some schemes – primarily the police and firefighters' schemes – have different levels of member contributions, or different ways of calculating contributions, between the legacy and reformed schemes. This means that moving from one scheme to another would require a 'balancing payment' (or

⁶³ Ibid

⁶⁴ Ibid, para A.79-81

⁶⁵ [HL Bill 44 - Explanatory Notes](#), paras 200-05

⁶⁶ [Pensions update: immediate detriment High Court claims, FBU July 2021](#)

‘balancing refund’) to ensure that the right level of contributions had been paid.⁶⁷

For the ‘deferred choice underpin’ the Government decided that there should be a two-stage approach:

- After the end of the remedy period, there would be a retrospective charge on all scheme members by reference to the rate of contributions in their legacy scheme.
- At the point the member made their deferred choice (e.g. at retirement), if reformed scheme benefits were chosen, the contributions due under that scheme would apply.

It said that although this approach might result in some members’ contributions being amended twice, it would ensure that the correct level of contributions was ultimately charged, while “treating members consistently at the earliest opportunity.”⁶⁸ Scheme administrators expressed concern that this would be difficult to administer, particularly where payrolls had been outsourced and historic records might be unavailable.⁶⁹

Responses to the consultation from individuals were mixed regarding the fairness of asking scheme members to pay underpaid contributions, with some arguing that “given the revision of contributions is a result of a government mistake, underpayments should not be collected.” Regarding refunds due from schemes, there were concerns that these could push an individual into a higher tax band in the year the refund was made.⁷⁰

In response, the Government said the ability to adjust member contributions retrospectively, so that the appropriate rate was paid, was important to ensuring equal treatment of members.⁷¹ For this reason, there would be a two-stage process in which contributions could be adjusted: the first stage would be when a member was moved to the legacy scheme in respect of service for the remedy period; the second if they opted for reformed scheme benefits at retirement. This would ensure that “members have paid the correct contributions for the benefits that they choose to receive.”⁷²

A “strong majority” of respondents to the consultation said scheme members should not be charged interest on underpaid contributions. The reason was “the belief that the remedy was a result of errors made by the Government

⁶⁷ HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Consultation](#), CP 253, July 2020, Annex, para A.7

⁶⁸ Ibid, para A9 and 10

⁶⁹ HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Government response to consultation](#), CP 373, Feb 2021, Annex A, Ibid, para A.20

⁷⁰ Ibid, para A.15-17

⁷¹ Ibid, para A.29

⁷² Ibid, para A.34

and that it should therefore bear any costs and compensate members for missing out on interest from savings or investments.⁷³

In response, the Government said that it was “right to add a reasonable rate of interest to sums owed to schemes and sums owed to members” in order to ensure “fair and equal treatment of members.”⁷⁴ The rates of interest would be prescribed centrally to “ensure consistency and to recognise that the issue of owed contributions – and refunds will remain for decades.” It would consult the Government Actuary on the appropriate rate of interest to add to sums owed to and by members.⁷⁵

3.6 Tax implications

In its consultation document, the Government said that most active members would not experience any changes to their tax liability due to the remedy. A small minority would experience tax impacts, either as a result of changes to employee pension contribution rates or changes to benefits built up causing them to exceed limits on pensions tax relief.⁷⁶

In February 2021, the Government said three clear themes had emerged in responses to the consultation:

- The remedy and its interaction with the tax system should place individuals back in the position in which they would have been, had the discrimination not happened.
- Clear communications and support would be needed to enable scheme members and beneficiaries to make informed choices.
- There were concern about the potential for individuals to receive large and unanticipated tax demands with no means of meeting them.

Tax adjustments could be required where there was a change in pension contributions due, whether that was in 2023, or at retirement, or both. Where an individual owed more contributions, they would receive tax relief at their marginal tax rate in the tax year the additional contributions were paid. The government recognised that, in some cases, this could result in the individual receiving less tax relief than they would have received had they paid those contributions in the relevant remedy period years. In these cases, it would be possible for members to apply for compensation for the difference in the tax relief received.⁷⁷

⁷³ Ibid, para A.23

⁷⁴ Ibid, para A.31-2

⁷⁵ Ibid, para A.34

⁷⁶ HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Consultation](#), CP 253, July 2020, Annex B

⁷⁷ HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Government response to consultation](#), CP 373, Feb 2021, para 2.94-5

In its response to the consultation, the Government said that an individual who had overpaid contributions would receive a payment to cover the value of the overpaid amount, but with an amount deducted to reflect the underpaid tax. This departed from the position set out in the April 2020 consultation, which was that individuals who had overpaid contributions in remedy period years beyond the usual statutory time limits for tax collection, would receive a full refund of contributions with no tax charge. The reason for the change was to ensure that “as far as possible, individuals should be put back in the position in which they would have been, absent the discrimination.” It would also “help to minimise any potential “windfall” advantage being enjoyed by one group of members over another.”⁷⁸

Annual and lifetime allowances

The annual and lifetime allowances are limits on the amount an individual can contribute tax-free to a pension over a year or lifetime respectively:

- The annual allowance (AA) limits the amount of annual pension savings that benefit from tax relief. There is a tax charge if contributions or the value of benefits accrued in a year, exceed the AA.
- The lifetime allowance (LTA) limits the amount of pension saving over an individual’s lifetime that can benefit from tax relief. Pension savings are tested against the LTA at ‘benefit crystallisation events’, for example, when an individual becomes entitled to a lifetime annuity.⁷⁹

The consultation highlighted the potential for some individuals to incur an AA or LTA charge due to implementation of the remedy.

For example, retrospective adjustments in pension entitlement could potentially trigger an AA charge, at two points:

- At the end of the remedy period (where an individual who had been a member of the reformed scheme was deemed to have been a member of the legacy scheme) or
- At retirement, for individuals who at that stage choose to receive reformed scheme benefits for the remedy period.⁸⁰

The consultation document, said the usual statutory time limit for reassessing tax would operate, placing a limit on the additional tax they could be charged.⁸¹ However, in its response to the consultation, the Government said it had decided that statutory time limit should not apply:

⁷⁸ Ibid, para 2.96

⁷⁹ [Finance Act 2004](#) (part 4, chapter 5). Detailed guidance is in HMRC’s [Pension Tax Manual – Lifetime Allowance](#) and [Annual Allowance](#)

⁸⁰ HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Consultation](#), CP 253, July 2020, para B27-9

⁸¹ Ibid

At the point where reformed scheme members were legally restored to membership of the scheme, most would see a reduction in their AA charge. The “minority of members” with sufficiently high income and/or pension accrual to trigger an AA charge within the remedy period, could opt to use ‘scheme pays’ if they did not want to pay the tax upfront.⁸²

HM Treasury has issued draft legislation to enable the deadlines that would usually apply for ‘scheme pays’ to be extended.⁸³

If a member faced an increased AA charge as a result of choosing reformed scheme benefits at retirement, the Government said it would ensure that they did not bear the cost of any additional AA charge as a result of exercising that choice (because it would be a direct result of the design of the remedy).⁸⁴

The Government said it could not give firm assessments of the number and type of scheme members that would be affected by AA adjustments. This is because an individual’s AA position depends on a range of factors that are specific to them, such as their salary and length of service and whether they have any other pension besides their public service pension.⁸⁵

3.7

Voluntary member contributions

Reformed and legacy schemes contained provisions allowing members to make additional contributions to enhance pension benefits. In older legacy schemes, these were ‘added years; from around 2007 onwards this gradually changed to ‘added pension’ (AP). In the consultation document, the Government proposed that all additional benefits purchased via voluntary member contributions in the remedy period could be converted to an equivalent value of AP in the alternative scheme. Any breaches of AP limits due to implementation of the remedy would be ignored.⁸⁶

⁸² HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Government response to consultation](#), CP 373, Feb 2021, para 2.91-3

⁸³ [Pension scheme pays reporting: information and notice deadlines](#), HMRC, July; ‘Scheme pays’ is an arrangement that can be used in certain circumstances: an individual’s annual allowance charge is paid by their scheme and their benefits adjusted to reflect this. [HMRC. Pension tax manual. PTM PTM056410 - Annual allowance: tax charge: scheme pays: general](#)

⁸⁴ HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Consultation](#), CP 253, July 2020; HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Government response to consultation](#), CP 373, Feb 2021, para 2.91-3

⁸⁵ Ibid, Annex B, para B.40

⁸⁶ HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Consultation](#), CP 253, July 2020, Annex A, para A14-18

Some of the reformed schemes included an option to buy-out some or all of any reduction to pension if benefits are taken before normal pension age.⁸⁷ The consultation document said that these arrangements were clearly related to the reformed schemes with their higher NPA and so could not be converted into an equivalent value AP in the legacy scheme. It proposed that members who were returned to the legacy scheme for the remedy period would therefore receive a refund of their contributions to such arrangements (although not any made by the employer).⁸⁸ Respondents to the consultation disagreed with the proposed approach, citing potential discrimination against members who would not receive the benefits they had paid for, particularly on the approach set out for EPA or ERRBO. In response, the Government said it was “considering ways to ensure that members may retain rights in the schemes in which they made voluntary member contributions, specifically in respect to EPA and ERRBO.”⁸⁹

3.8 Annual benefit statements

In its consultation document, the Government proposed requiring scheme administrators to “produce statements containing information on remedy period benefits under both the reformed and legacy scheme designs (as well as legacy scheme benefits for years of service before 2015; and reformed scheme benefits after 2022).” While recognising that this would be complex, the Government said that extending annual benefit information statements to include this information to all those in scope of the remedy was the best approach. To give schemes time to prepare, the Government had extended the timetable for implementation to October 2023.⁹⁰

3.9 Ill-health retirement

All public service pension schemes have rules under which an individual can draw an unreduced pension early on ill-health grounds. In some cases, the rules are different in the reformed and legacy schemes. And the fact that the pension age is generally higher in the reformed schemes, can lead to differences. Any member refused an IHR pension in one scheme may be eligible for IHR in their alternative scheme. In particular, the later pension age in the reformed schemes may have led to some members being refused ill-health retirement because they were deemed able to recover and return to

⁸⁷ This is known as Effective Pension Age (EPA) in the reformed scheme for civil servants (Alpha), Early Retirement Reduction Buy Out (ERRBO) in the reformed NHS pension scheme and Buy Out in the reformed Teachers’ pension scheme.

⁸⁸ HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Consultation](#), CP 253, July 2020, Annex A, para A14-18

⁸⁹ HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Government response to consultation](#), CP 373, Feb 2021, para A.43-6

⁹⁰ Ibid para A.56-69

work before that age. Conversely, the later pension age in the reformed schemes can mean IHR is more valuable because the enhancement is greater.

The consultation proposed that members in scope of the remedy, who had already retired on ill health grounds, would be able to retrospectively choose the benefits in the alternative scheme if they wished.⁹¹ In its response to the consultation in February 2021, the Government confirmed that members in receipt of IHR benefits who were in scope of the remedy, would have a choice as to which benefits they wished to receive for the remedy period. In practice, schemes would need consider whether the member would have been entitled to IHR benefits under the alternative scheme, which would “normally require a medical practitioner to advise whether they met the criteria for the payment of IHR benefits in the alternative scheme at the relevant date.” Where this was the case, the member would be able to elect to receive those instead of the benefits already in payment. Where they would not have satisfied the criteria for IHR benefits, they would be able to opt for the alternative benefits, if any, that would have been payable under the alternative scheme.⁹²

3.10 Other issues

Other issues covered in the response to the consultation were:

- **Contingent decisions.** Where individuals took decisions on introduction of the 2015 schemes which they would not have taken had they known they would be able to stay in the legacy scheme, schemes would consider representations on a case-by-case basis. If a member wished to be treated as accruing benefits in their legacy scheme for the remedy period, payment of the correct contributions would be required retrospectively and tax adjustments might need to be made. Where a period of more than five years had elapsed since a member opted out of a final salary legacy scheme, they would usually lose their right to the “final salary link” provided for by section 20 of the 2013 Act.⁹³
- **Public sector transfers.** The response to consultation said that members undertaking transfers via the Public Sector Transfer Club would not be required to make their choice at the point of transfer, but at the point they take their benefits relating to the remedy period. Any decision would relate to all service in respect of remedy period, whether or not that

⁹¹ Ibid para A.61

⁹² Ibid

⁹³ HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Consultation](#), CP 253, July 2020, para A.43-7; HM Treasury, [Government response to consultation](#), CP 373, Feb 2021, para A.96-8

arose from service in employment in the receiving scheme or service arising from a Club transfer.⁹⁴

- **Pension sharing on divorce.** Cash Equivalent Transfer values would be calculated as though the pension debit member had become a deferred member and had elected to transfer their pension rights at the relevant date. The transfer value would be based on whichever scheme, legacy or reformed, produced the higher amount in relation to any period of service over the remedy period.⁹⁵
- **Abatement.** The Government would consider this issue further given the complexity of the issues involved.⁹⁶

⁹⁴ HM Treasury, [Government response to consultation](#), CP 373, Feb 2021, para A.106

⁹⁵ Ibid para A.112

⁹⁶ Ibid para A 121-2

4

Post April 2022 provision

The Government believes that “the reformed schemes initially introduced in 2015 provide an appropriate level of public service pension provision.”⁹⁷ It proposed bringing forward primary legislation to close legacy schemes for future service, for all members from 2022. This would ensure that all active members were treated equally in respect of the pension scheme designs offered for future service and would all be in the reformed schemes from that date. The final salary link for members with prior service in final salary schemes would be retained (meaning that benefits in the legacy final salary schemes would be based on pensionable pay on or near their retirement rather than at the point they move to a reformed scheme).⁹⁸ In addition, the Government has committed to protect “weighted accrual” beyond 1 April 2022. This relates to the fact that legacy schemes for police and firefighters have an uneven accrual rates, the effect of which is that the longer a person stays in service, the better the overall accrual rate. The Government is legislating to ensure that the anticipated accrual rate for the legacy pension is maintained for the affected schemes.⁹⁹

Because the transitional arrangements under the 2013 Act fully protected members within ten years of the legacy scheme’s normal pension age on 1 April 2012, by April 2022 they will all have reached that age. Those who continued to work beyond normal pension age would build up benefits in the reformed scheme from 1 April 2022. To the extent that this change had an impact on such a member’s pension it “may be beneficial, for example due to higher accrual rates in the reformed schemes.”¹⁰⁰

In its response to the consultation, the Government said that the main issues raised by respondents related to higher normal pension ages under the reformed schemes. Respondents from some workforces, mainly firefighters and police, argued that they believed the reforms also discriminated on the basis of sex. For example, the Fire and Rescue Services Association (FRSA) were concerned generally around the effect of increased NPAs for female employees, very few of whom would be able to meet fitness standards to normal pension age due to genetics. There was also concern about indirect age discrimination, as younger members would have to work for longer.¹⁰¹

⁹⁷ HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Consultation](#), July 2020, para 3.8; For more detail, see [Public service pensions: the 2015 reforms](#), Commons Library Briefing Paper, CBP 5768, July 2021

⁹⁸ Ibid para 3.7-9; [HCWS 380 16 July 2020](#)

⁹⁹ HM Treasury, [Public Service Pensions and Judicial Offices Bill: Equality Impact Assessment](#), July 2021, para 3.9

¹⁰⁰ Ibid, para 3.11-2

¹⁰¹ HM Treasury, [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Government response to consultation](#), CP 373, Feb 2021, para 2.14-8

Concerns were also expressed about the impact on those who were members of schemes with a link to the State Pension age. For example, Ministry of Defence police officers who are members of the civil service schemes, raised concerns about being put into schemes with increased NPAs.¹⁰²

In addition, a specific issue has been raised regarding whether moving members of the legacy police and firefighter schemes to the reformed schemes introduces a new discrimination based on age. The Equality Impact Assessment says analysis is being conducted by individual schemes on the potential impact of this:

The government is also aware of an issue specific to a minority of schemes, upon which some of the measures in the Bill may impact. In particular police and firefighter legacy schemes, a member may take their benefits after a certain number of years' service, even where that member has not attained 55 years of age. Two members may therefore have joined the relevant police or firefighter scheme on the same date (but at different ages) and achieve the requisite number of years' service at the same time (but at different ages). Where those members have also accrued benefits in a reformed scheme, the older member is more likely to be able to access those (reformed scheme) benefits simultaneously, as they are more likely to have achieved the minimum pension age in the reformed scheme (which is 55 years of age). A member who has not attained the age of 55 at the point they become eligible to take benefits from the police or firefighter legacy schemes in question will become a deferred member in respect of any connected reformed scheme benefits. As at paragraphs 1.79 to 1.80 above, further analysis will be conducted by individual pension schemes as to the potential impact of this in such cases.¹⁰³

¹⁰² Ibid p36

¹⁰³ HM Treasury, [Public Service Pensions and Judicial Offices Bill: Equality Impact Assessment](#), July 2021

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