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Public service pensions - 2015 reforms

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Contents:

Contents

Summary

Reforms to public service pensions introduced under the Labour Government had the aim of improving financial sustainability and reflecting changes in life expectancy, working practices and the private sector, including increases in the pension age for new entrants only.

In June 2010, the Coalition Government established an Independent Public Service Pensions Commission, chaired by former Labour Secretary of State for Work and Pensions, Lord Hutton of Furness, to look at "the long-term affordability of public sector pensions, while protecting accrued rights." 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 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 then 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. For more detail, see Library Briefing Paper CBP-6581 Public service pension age – 2015 onwards (December 2019).

Impact of legal challenges

There was protection for accrued rights and transitional protection arrangements to enable those 'closest to retirement' to remain in their existing schemes either until retirement, or for a limited period, depending on their date of birth. In December 2018, the Court of Appeal ruled in McCloud v Ministry of Justice that the 'transitional protection' offered to some members as part of the reforms amounted to unlawful discrimination. The matter was remitted to the Employment Tribunal, to determine a remedy for the claimants.

In July 2019, having been denied leave to appeal, the Government said the difference in treatment would be remedied across public service pension schemes (HCWS 1275 15 July 2019). In July 2020, it launched a consultation on its proposal to address unlawful discrimination arising from the transitional arrangements. It would give members a choice as to whether they accrue benefits in the relevant reform or legacy scheme for the 'remedy period' (1 April 2015 to 31 March 2022). There were two options: an i**mmediate choice exercise,** 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 retirement, or when benefits are drawn and, up until that point, members would be treated as having been in their legacy scheme during the remedy period. The choice would be offered to all affected members, whether they originally received transitional protection or not. The proposals apply to all members who were in a relevant public service pension scheme on or before 31 March 2012 and remained in a relevant pension scheme on or after 1 April 2015 (HCWS 380, 16 July 2020; Public service pension scheme consultation: changes to the transitional arrangements to the 2015 schemes, July 2020).

The Government also proposed that from 1 April 2022, all members who are not already in the reformed schemes and who are still accruing benefits in legacy schemes, would be placed into the 2015 reformed pension schemes.

Cost control mechanism

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." It said this counted as a 'member cost' and, as such, would be considered as part of the completion of the cost control element of the 2016 valuations process. Current employer contribution rates would not be affected (HCWS 380, 16 July 2020; Update of the Cost Control Element of the 2016 valuations, 16 July 2020).

The 'cost control mechanism' was introduced as part of the 2013 reforms, to provide 'backstop' protection to the taxpayer in case of unexpected increases in member costs. It provides that, if valuations show the cost of a scheme to have risen or fallen outside of a target rate, steps must be taken to bring costs back to target. Although initial results of the first post-reform valuations indicated that members should get "improved pension benefits for employment over the period April 2019 to March 2023", discussions on how to implement this were put on hold pending the agreement of McCloud remedies. (HC Deb 6 September 2018 c13WS; HCWS 1286, 30 January 2019).

It is not yet clear what will be the impact of incorporating the remedy costs in the cost control mechanism will be: the consultation on the remedy is ongoing and HM Treasury is to publish new directions for completing the 2016 valuations. However, trade unions expect that the improvements for members that had been expected will be affected, and have opposed the move (FDA, August 2020; FBU, 17 July 2020;PCS, 16 July 2020). The NASUWT said it meant that the remedy would be paid out of cash meant for improving benefits in the Teachers' Pension Scheme. The result would be that teachers would "miss out on the benefits of this money, including mostly new teachers who the McCloud judgement does not apply to, who are therefore facing new discrimination." (TES, 27 July 2020).

Other relevant Library Briefing Papers include CBP-8478 Public service pensions -facts and figures (December 2019), CBP 6971 Public service pensions: cost control mechanism and CBP 8540 Judges pension schemes (July 2020).

1. Background

The Labour Government negotiated reforms to the main public service pension schemes. These had the aim of improving financial sustainability and reflecting changes in life expectancy, working practices and the private sector.[1] They included:

> limited increases in pension age for groups such as the uniformed services, mostly for new entrants. In the civil service, NHS and teachers schemes existing members were allowed to keep a pension age of 60 if they wished, but new entrants have a pension age of 65 and pension ages lower than 65 will be phased out by 2020 in the Local Government Pension Scheme.[2]

Opinion was divided on whether these reforms went far enough. The TUC, for example, argued that they put the schemes on a sustainable footing.[3] The Institute of Directors (IoD), on the other hand, described them as "inadequate" and argued for further reforms, including further increases in the pension age.[4] The Confederation of British Industry (CBI) agreed that the position was "not sustainable" and reform was needed.[5]

In the run-up to the 2010 election, the Conservative Party had said it would set up an independent Commission to conduct a full review of public sector pensions.[6] The Liberal Democrats had also called for a radical review, arguing that more transparency is needed about the costs of public sector pensions.[7]

1.1 Independent Public Service Pensions Commission

In June 2010 Budget, the Coalition Government announced the establishment of the Independent Public Service Pensions Commission, to be chaired by former Labour Work and Pensions Secretary of State, Lord Hutton of Furness. It would "undertake a fundamental, structural review of public service pension provision by Budget 2011."[8]

Also in Budget 2010, the Government announced a switch in the measure of prices used for pension increases – from Retail Prices Index (RPI) to Consumer Prices Index (CPI).[9] This was controversial because the CPI tends to produce lower increases – see Library Briefing Paper CBP 5434.

1 Department of Trade Industry, Pensions Update – October 2005',
2 Independent Public Service Pensions Commission: Interim Report, 7 October 2010, p9
3 TUC, Exploding Public Sector Pensions Myths: A Briefing for Trade Union Members, July 2009
4 TUC, Exploding Public Sector Pensions Myths: A Briefing for Trade Union Members, July 2009, page 5
5 CBI, *Clearing the pensions fog*, December 2008
6 Conservative Party website, Where we stand – pensions and older people
7 Philip Webster, 'Liberal Democrats plan to freeze public sector pay and scrap Trident', *The Times*, 17 September 2009; See also Liberal Democrat Press Release, 'Action needed to tackle fat cat public sector pensions, says Webb', 2 December 2009; See also, Liberal Democrat Policy Briefing, 'A fair deal for older people'
8 HM Treasury, Budget 2010, HC 61, June 2010
9 Ibid, p2

The Commission's Interim Report was published on 7 October 2010. It recommended that the most effective way of making savings in the short-term was to increase member contribution rates and that there was a case for doing so. In response, the Government announced that it would increase member contribution rates by an average of 3.2 per cent across public service schemes, except for the armed forces. The increases were phased-in over the period 2012/13 to 2014/15.[10]

Lord Hutton also said longer term structural reform was needed:

> It is my clear view that the figures in this report make it plain that the status quo is not tenable. 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.[11]

In its final report, published in March 2011, the Commission said its aim was to design a structure that would share the risks and costs of public service pensions between employees and government fairly. It said that moving to schemes providing pension benefits based on career average revalued earnings, rather than final salary, would remove much of the salary risk associated with public service pensions.[12] However, it said the greatest risk facing public service schemes – rising longevity – should be addressed through increases in the Normal Pension Age (NPA).[13]

The reforms introduced by the Labour Government had generally involved increases in the NPA for new entrants only. The Commission recommended that in its proposed new schemes (to which all existing members of the current schemes would be moved) members' NPA should be linked to their State Pension age:

> The Government should increase the member's Normal Pension Age in the new schemes so that it is in line with their State Pension Age. The link between the State Pension Age and Normal Pension Age should be regularly reviewed, to make sure it is still appropriate, with a preference for keeping the two pension ages linked.[14]

In the case of the schemes for the police, firefighters and armed forces, the Commission recommended that the NPA should reflect the unique characteristics of the work involved:

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

11 Independent Public Service Pensions Commission: interim report, October 2011, foreword

12 Independent Public Service Pensions Commission: Final Report, 10 Mar 2011, para 4.25

13 The earliest age at which in the course of events, a scheme member may retire with payment of his or her unreduced accrued superannuation benefits (see Glossary on page 199 of the Commission's report)

14 Ibid, p94, recommendation 11; Under existing legislation, the SPA for women is scheduled to rise to 65 by 2018; the SPA for men and women will then rise to 66 by October 2020. It was then scheduled to rise to 67 between 2034 and 2036 and to 68 between 2044 and 2046. However, on 29 November, the Chancellor announced his intention to bring the increase to 67 forward to between April 2026 and 2028. See Library Standard Note SN 02234 State Pension age for further details

> The Government should consider setting a new NPA of 60 across the uniformed services, where the NPA is currently below this level in these schemes, and keep this under regular review.[15]

In addition, the Commission recommended that the Government give consideration to an overriding mechanism – a cost control mechanism - to ensure that public service pensions remain affordable and sustainable.[16]

Initial responses

A number of organisations welcomed the approach taken by the report. The Pension and Lifetime Savings Association argued that it struck the "right balance between fairness and cost, and have avoided a race to the bottom."[17] The Confederation of British Industry described the report as a "big step forward towards making public sector pensions affordable and sustainable in the long-term.[18]

The Pensions Policy Institute said the proposals on the pension age meant that in future most public sector workers would need to work longer than under the current schemes before receiving their pension.[19]

The Institute for Fiscal Studies thought there were good arguments in favour of increasing the pension age:

> The proposal to set the NPA equal to the SPA for most public sector workers does reduce the generosity of the schemes: those affected would typically have to contribute for longer to receive the same pension for fewer years. There are at least two good arguments in favour of such an increase. First, many new members of public service pension schemes already have an NPA of 65 while those who were members of such schemes before the last set of reforms came into force often have an NPA of 60. Aligning these would mean that individuals who were doing the same job, with the same pay, also accrued the same pension regardless of whether they happened to have joined the pension scheme before or after the cut-off date set out in the previous reforms. Second, rising longevity led Lord Turner's Pensions Commission to recommend that the SPA should increase in future from 65 to 68 and this proposal was accepted with cross party support. Increasing the NPA in public service pension schemes would seem consistent with this decision, and there is also an attraction in aligning the ages at which an individual can start to receive their state pension and the age at which a full public service pension is available. In addition a formal link between the NPA in public service pension schemes and the SPA would mean that were future Governments to decide to increase the SPA further (presumably in the light of further increases in longevity) then the default would be that this led to an increase in the NPA in public service pensions.

15 Ibid, p112, recommendation 14

16 For more detail, see Library Briefing Paper CBP-6981 Public service pensions – employer cost cap (September 2018)

17 'NAPF reacts to Hutton review of public sector pensions, 10 March 2011' NAPF says its membership covers around four million people with public sector pensions.

18 CBI press release, 'Lord Hutton's final report is 'big step' towards public sector pensions reform – CBI chief', 10 March 2011. The review referred to is HM Treasury's consultation on the discount rate used to set unfunded public service pension contributions

19 Pensions Policy Institute press release, 10 March 2011'A career average scheme is likely to be fairer for public sector employees with different career paths', says Pensions Policy Institute

> Those in the uniformed services - the armed forces, police and fire fighters - are to have an NPA of 60 for future accrual rather than an NPA equal to the SPA. In some cases, this also represents a substantial reduction in the generosity of these schemes (although not in the case of recent entrants to the fire fighters scheme who already face an NPA of 60) although significantly less than had their NPA been increased to the SPA. The desire to provide generous support to these individuals after they leave these careers - in particular where these careers typically can only be pursued up to a relatively young age - is understandable. What is less clear is whether more generous pensions, presumably with an expectation of early retirement, is the best way to provide such support. An alternative that might be more attractive would be to increase the NPA to the SPA for all public sector workers including those in the uniformed services and instead offer some of those leaving the uniformed services specific payments to support a transition into alterative careers. Careful targeting of such payments - for example for retraining and relocation - could offer better value for money for the taxpayer than using universally more generous pension arrangements, and were it deemed appropriate would also allow the payments to some individuals to be significantly more generous.[20]

However, TUC General Secretary, Brendan Barber, said that even without further changes, public sector workers were being asked to "pay much more for substantially less." He said imposing changes without agreement could lead to real industrial tensions and getting the decisions wrong could leave future pensioners in poverty.[21] UNISON General Secretary, Dave Prentis, said industrial action was "now one big step closer."[22]

[20] IFS website, Public service pension reforms: an improved structure, but impact on generosity and cost as yet unknown

[21] TUC, Imposing harsh changes to public sector pensions could leave future pensioners in poverty, 10th March 2011

[22] UNISON press release, 10 March 2011, 'Hutton pensions report brings industrial action closer'

2. Taking the reforms forward

2.1 Negotiations with the trade unions

In its 2011 Budget, the Government said it had accepted Lord Hutton's recommendations as a basis for consultation:

> The Government accepts Lord Hutton's recommendations as a basis for consultation with public sector workers, trades unions and others, recognising that the position of the uniformed services will require particularly careful consideration. The Government will set out proposals in the autumn that are affordable, sustainable and fair to both the public sector workforce and the taxpayer.[23]

The then Chancellor of the Exchequer, George Osborne, said there should be no "cherry-picking":

> I confirm today that the Government accept Hutton's recommendations as a basis for consultation with public sector workers, unions and others. There should be no cherry-picking on either side. I believe that this House should also recommend similar changes to the pensions of MPs.[24]

On 17 June, the then Chief Secretary to the Treasury, Danny Alexander, said the case for reform was clear and compelling:

> Under the current system, as we live longer, current levels of contributions are unfairly balanced between the employee and taxpayer. Under the current system, the final salary scheme is unfairly biased towards the higher earners. The case for reform is clear and compelling.[25]

On 19 July 2011, Mr Alexander, announced the establishment of scheme level discussions, to report by the end of October.[26]

On 14 September, the TUC announced its intention to hold a day of action on 30 November:

> The TUC and unions are committed to continuing the talks with the government, and with the relevant employers in each of the separate major public service pensions schemes, but the government is urged to bring new proposals to the table urgently to make progress possible. Today's meeting also agreed, however, given the failure of the government to engage properly in the negotiations, to step up the campaign and to hold a first day of action on Wednesday 30 November,[27]

The then Shadow Chief Secretary, Angela Eagle, said strikes should always be a last resort:

> Strikes should always be last resort and are usually a sign of failure - failure the country cannot afford. The Government needs to convince people it is not trying to create such failure. Ministers must show a

23 HM Treasury, Budget 2011, para 1.132
24 HC Deb, 23 March 2011, c961
25 Danny Alexander, Speech to IPPR, 17 June 2011
26 HC Deb, 19 July 2011, c91-4; Letter from the Chief Secretary to the Treasury to TUC General Secretary, Brendan Barber, 18 July 2011
27 TUC Statement on pensions – 14 September 2011; BBC News, 14 September 2011, 'Unions call national day of action over pensions.'

> willingness to conduct proper and meaningful negotiations rather than pursuing a path of deliberate confrontation. But unions should also demonstrate they intend to exhaust every option of reaching a settlement before considering strike action.[28]

George Osborne, said strike action would be "totally irresponsible":

> And we're reforming public sector pensions so they are generous to public servants and also fair to taxpayers. Let me say this to the unions: to go on strike in economic times like this, when you're being offered pensions far more generous than most other people could ever afford, will hit growth, will cost jobs. It is totally irresponsible.[29]

On 25 October, the *Financial Times* reported that the latest round of negotiations had "ended in an impasse."[30]

November 2011 offer

On 2 November 2011, the Chief Secretary to the Treasury announced a new offer to the unions, including:

- **A more generous accrual rate**. In October it had proposed "cost ceilings based on Lord Hutton's recommendations that generate an accruals rate of 1/65th for the new schemes." It was now proposing a cost ceiling of 1/60th of average salary accruing for each year worked. This represented an 8% improvement in the Government's offer.

- **Transitional protection.** Scheme negotiations would be given the flexibility outside the cost ceiling, to ensure that anyone with 10 years or less to their pension age on 1 April 2012 would see no change in when they retire, nor any decrease in the amount of pension they receive at their current normal pension age.[31]

He said the reforms could endure for 25 years or longer:

> Yes, we are asking public service workers to contribute more. Yes, we are asking them to work longer, along with the rest of society, but we are offering the chance of a significantly better pension at the end of it for many low and middle income earners. It will be a fairer pension, so that low income workers stop subsidising pensions for the highest earners. It will be a sustainable deal that will endure for at least 25 years, and an affordable deal that will ensure that taxpayers are asked to make a sensible contribution, but will keep costs sustainable and under proper control.[32]

The offer was conditional on agreement being reached - "an agreement by the end of the year on the heads of terms on a scheme-by-scheme basis."[33]

The details of the Government's preferred design for the new public service schemes included the proposed pension age increases. In recognition of the

28 Labour Party Press Release, Strike should always be last resort and are usually a sign of failure, 14 September 2011; See also Ed Miliband's speech to Party Conference 13 September 2011

29 Speech to Conservative Party Conference – 3 October 2011; See also speech to Francis Maude to Party Conference – 3 October 2011

30 Brian Groom, 'Unions set for fight after pensions talks fail', *Financial Times*, 25 October 2011

31 HC Deb, 2 November 2011 c928

32 HC Deb 2 November 2011 c930

33 Ibid, c928 and c935

fact that different designs might suit different workforces, the Government set out cost ceilings within which alternatives could be considered.[34]

December 2011 – Heads of Agreement

On 20 December, the Chief Secretary to Treasury confirmed that the member contribution increases would go ahead. He also gave an update on progress in negotiating the longer-term reforms:

- "Heads of agreement" had been established with most unions in the local government, health, civil service and teachers' schemes. This meant the offer made in November had been "secured." Key aspects of the agreement were that in future, scheme pension ages would match the State Pension ages and schemes would be on a career average basis. Those within 10 years of retirement would see no change in their normal pension age nor any decrease in the amount they receive at that age. The schemes would have a higher accrual rate than had been announced in November, but each year's earnings factor would be revalued in line with prices rather than earnings, so that there was no increase in cost compared to the November offer.
- The Government had recognised that the Local Government Pension Scheme (LGPS) should be treated differently because it was funded. The Local Government Association and the trade unions have agreed that the pension age in the new scheme will be linked to the state pension age, and their preference is to deliver a career average scheme. Discussions would continue on the detail.
- Discussions on police, armed forces, judiciary and fire service schemes have been a separate process from the start, and proposals would be brought forward in due course.
- The Government had made a commitment that the reforms would be "sustained for at least 25 years. It intended to include provisions on the face of the forthcoming Bill to ensure that a "high bar is set for future Governments to change the design of the schemes."
- Because agreement had been reached, the Government had also agreed to "retain the fair deal provision and extend access for transferring staff." [35]

Responding to the statement, the then Shadow Chief Secretary to the Treasury, Rachel Reeves, said Labour had been "clear from the beginning that the Government and public service employees would need to find ways of adjusting to the welcome fact that people are living longer." It had been clear that any resolution to the dispute needed to be fair to taxpayers and public service employees and genuinely sustainable for the long term:

> The vast majority of public sector workers, including dinner ladies, community nurses and police community support officers, retire on very modest pensions; moreover, they are already being hit hard by a pay freeze and worried about mounting redundancies. It was clear to us that tearing up decent public service pension schemes or imposing punitive and unaffordable contribution increases would be entirely

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[34] HM Treasury, Public Service Pensions: good pensions that last, Cm 8214, November 2011
[35] HC Deb, 20 December 2011, c1201

> counter-productive if it resulted in lower savings and inadequate retirement incomes that only left more people retiring into poverty, dependent on state benefits in their old age. We will be looking at the detail of these proposals on the basis of the tests that we have set out.[36]

The TUC said that progress varied between the sectors but that in most cases the emphasis was now on "giving active consideration to the new proposals that have emerged rather than considering the prospect of further industrial action":

> Since the day of action we have seen a new atmosphere in the negotiations. The state of play varies between sectors. Progress has been made in health and local government where key principles for further negotiation in heads of agreement will provide the basis for further talks in the New Year. It's important to stress that no agreements have been reached, but unions now have proposals to put to their executives and members. We have reached a stage where the emphasis in most cases is in giving active consideration to the new proposals that have emerged rather than considering the prospect of further industrial action.
>
> We have been talking for many months but since the day of action that involved millions and with the intensive discussions over recent days we now see change. Accrual rates are more favourable then were originally proposed, there is enhanced protection for those nearing retirement, Fair Deal protection for those whose jobs transfer out of the public sector and there will be no adverse changes to pensions for 25 years.'[37]

Dave Prentis of UNISON said its members had agreed to more talks but that if these failed, it still had the option of taking strike action:

> The NHS scheme discussions are due to end in late January, and the local government pensions scheme negotiations will continue until April 2012. At this point, we will put the final offer for both schemes to all our members.[38]

Further detail was provided in Written Statements relating to the scheme in question.[39]

2.2 Scheme by scheme negotiations

The unfunded schemes

On 9 March 2012, the Government published Proposed Final Agreements for the Teachers, NHS and Civil Service schemes. It said these delivered its "key objectives on linking Normal Pension Age to State Pension age and moving to schemes based on career average salary, while protecting those closest to retirement." The cost ceilings set on 2 November 2011 remained unchanged, with no additional money made available:

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36 HC Deb, 20 December 2011, c1204

37 TUC press release, Statement after TUC PSLG meeting, 19 December 2011

38 UNISON website – homepage (viewed 12 January 2012)

39 HC Deb, 20 December 2011, c150WS (civil service); Ibid, c152WS (local government); c157WS (teachers); c159WS (health)

Discussions have now concluded with health, education and civil service unions on details for new public service pension schemes to be introduced from 2015.

Heads of Agreement on the main elements of scheme design were reached on 20 December 2011 for the NHS Pension Scheme, the Principal Civil Service Pension Scheme and the Teachers' Pension Scheme. Further work on the remaining details has taken place between departments and trades unions. Discussions have now concluded for these schemes and Proposed Final Agreements, based on the Heads of Agreement reached on 20 December, have been published today by departments.

These Proposed Final Agreements remain in line with the approach set out in Lord Hutton's report and will mean that public service pensions remain among the very best available. The agreements also continue to deliver the Government's key objectives on linking Normal Pensions Age to State Pension Age and moving to schemes based on career average salary, while protecting those closest to retirement. While most workers will be asked to retire later and pay more towards their pension, at the same time, most low and middle earners working a full career will receive pension benefits at least as good, if not better, than they get now. Those less than ten years from their Normal Pension Age on 1 April 2012 will continue to be protected from these changes.

Details agreed include, a process with trades unions for assessing the equalities impacts of these reforms; clarification on death in service and other ancillary benefits, such as the treatment of members who leave active service but rejoin within five years; and options for members to contribute more in order to top up their pension if they choose to retire early. The enhanced cost ceilings set on 2 November 2011 remain unchanged, with no additional money made available.

The majority of unions have agreed to take these Proposed Final Agreements to their Executives as the outcome of negotiations. In parallel with this process, the Government has begun working on the implementation of these scheme designs and will introduce legislation as soon as parliamentary time allows, so that new schemes can be in place by 2015.[40]

[40] HM Treasury press release, Discussions concluded on public service pension details, 9 March 2012

Further details were in written statements and on scheme websites and are now in regulations:

	Proposed final agreement – written statement	Scheme website	Regulations
Teachers' Pension Scheme	HC Deb 12 March 2012 c4WS	TPS E&W Proposed Final Agreement Consultation on the TPS Scotland	*Teachers' Pension Scheme Regulations 2014 (SI 2014/512)* Teachers' Pension Scheme (Scotland) Regulations 2015
NHS Pension Scheme	HC Deb 12 March 2012 c7WS	NHS E&W proposed Final Agreement NHS Pension Scheme Scotland Regulations	*NHS Pension Scheme Regulations 2015 (SI 2015/94)* *NHS Pension Scheme Scotland Regulations*
Civil Service Pension Scheme	HC Deb 20 December 2011 c150-1WS	Civil Service Pension Scheme – Proposed Final Agreement	*The Public Service (Civil Servants and Others) Pensions Regulations 2014 (SI 2014/1964)*
Firefighters Pension Scheme	HC Deb 9 February 2012 c33WS	FPS England: proposed final agreement FPS Scotland consultation FPS Wales circular	*Firefighters' Pension Scheme (England) Regulations 2014 (SI 2014/2848)* *Firefighters Pension Scheme (Wales) Regulations 2015 (SI 2015/622)* *Firefighters Pension Scheme (Scotland) Regulations 2015 (SI 2015/19)*
Police Pension Scheme	HC Deb 4 September 2012 c20WS	Home Office guidance – Police Pension Reform	*Police Pensions Regulations 2015 (SI 2015/445)* *Police Pension Scheme (Scotland) Regulations 2015 (SI 2014/142)*

		PPS Scotland consultation	
Armed Forces Pension Scheme	HC Deb 16 October 2012 c15WS	MoD – Final agreement for the new Armed Forces Pension	*Armed Force Pension Regulations 2014 (SI 2014/2336)*

Response of the trade unions

The Government's proposals for reform of the **NHS Pension Scheme** were rejected by the BMA, UNITE and the GMB.[41] Organisations such as the Royal College of Midwives and the Chartered Society of Physiotherapists announced their "reluctant" acceptance of the Government's final offer.[42] UNISON announced on 30 April 2012 it that a combination of a low turn-out and a close vote on a ballot of its members meant there was "no mandate to endorse the pensions proposals, but equally no mandate to take further industrial action."[43] In February 2012, RCN members voted to reject the proposals, although on a low turn-out.[44]

The Government's announcement for proposed reform of the **Teachers' Pension Scheme** in England and Wales was accepted by the Association of Teachers and Lecturers.[45] In March, the National Association of Head Teachers said it had "no further plans for action."[46] However, the National Union of Teachers, NASUWT (the Teachers' Union), University College Union and UCAC (the Teachers' Union in Wales) said they would campaign for further changes.[47]

Members of the FDA and Prospect voted to accept the Governments proposed new scheme for **civil servants**, although the unions stressed that this should not be seen as an endorsement of the new scheme - increases in pension contributions and the switch to the CPI, in particular, had

41 UNITE to ballot members on NHS pensions offer, 9 February 2012; Unite NHS members to stage protest after emphatic rejection of pension proposals, 20 March 2012; GMB Press Release, NHS GMB Members Vote No On Pensions, 22 May 2012; see also GMB newsletter, April 2012/04; BMA Briefing, June 2012; The ballot results can be seen on its website; BMA – Public sector pension reform – challenging unfairness (viewed October 2012)

42 RCM press release, 3 May 2012, 'Government pensions offer accepted'; Chartered Society of Physiotherapy press release, 1 May 2012, NHS members reluctantly accept changes to their pension scheme

43 'UNISON health workers to decide on final pension proposals, 9 March 2012' UNISON press release, 30 April 2012, UNISON NHS pension ballot result. A ballot UNISON health members in England, Wales and Northern Ireland on changes to the NHS scheme returned a turnout of 14.8% of those eligible to vote. Of that, 14.8%, the result was close with 50.4% voting to reject and 49.5% to accept

44 'Results of RCN member vote on pensions', 28 February 2012. 65,759 votes were cast, a turnout of 16.17%; 41,009 members (62.36%) voted to reject the Government's proposals, while 24,533 members (37.30%) voted to accept the proposals; NHS Employers, 'Industrial action roundup', 23 April 2012

45 'Teaching unions accept pensions deal', The Guardian January 2012

46 NAHT comments on government announcement that pensions talks have concluded

47 NASUWT, Pensions Latest, May 2012; NUT Pensions Campaign, Strike Action in London - 28 March, Key Facts for NUT Members; UCU press release 27 April 2012, 'UCU will join strike action and protests on 10 May'; UCAC website, Your pension under threat (viewed 9 May 2012)

"generated both anger and resentment" among its members.[48] Members of the PCS, UNITE, the Immigration Services Union and the Prison Officers' Association voted to reject the Government's proposed reforms.[49]

Fire Brigades Union (FBU) described the proposals for the **Firefighters Pension Scheme** as "unacceptable" on the grounds that they included "unaffordable and unfair contribution rates" and a "totally unrealistic retirement age for firefighters."[50] A key concern was the position of firefighters aged 55 and over who could not retain the required levels of fitness to age 60 but do not have a permanent medical condition such that they qualify for an ill-health pension. [51]

Local Government Pension Scheme

Unlike the other main public service pension schemes which operate on a Pay-As-You-Go basis (meaning contributions are paid to the sponsoring government department, which meets the costs of pensions in payment) the Local Government Pension Scheme (LGPS) is funded (meaning that contributions are paid to a fund, which is invested and used to pay pension benefits at retirement).[52]

In October 2010, following the publication of the Independent Public Service Pensions Commission's interim report, the Coalition Government announced that it intended to increase member contributions by an average of 3.2% across public service pension schemes by 2014/15. Increases would be phased-in and designed to protect the lower paid.[53] The Government expected savings from the LGPS if £900 million a year by 2014/15 as a result.[54]

Trade unions expressed concern that the increases would be unaffordable for low paid local government workers.[55] On 16 February 2010, the Local Government Group[56] wrote to the Chancellor setting out its concerns. These included the impact on middle earners, given the Government's commitment to protect the lower paid, which formed a high proportion of the workforce. It was concerned that proportion of members opting out would be far greater than the 1% envisaged in the Spending Review announcement, leading to a risk that the target savings would not be

48 FDA website – Pensions 2015 – comment of May 2012 (viewed October 2012); Prospect press release, Members vote for 2015 pension scheme but battle for fairness continues, 14 May 2012

49 PCS website 21 March 2012 – next steps in the national campaign (viewed 4 July 2012); Unite Ministry of Defence staff to strike over pensions' proposals on 10 May, 26 April 2012; ISU Union for Borders Immigration and Customs Strike Action on 10 May (viewed October 2012)

50 FBU Press Release, Government Issues Proposed 'Final Agreement' Document, May 24, 2012, CIRCULAR 2012 HOC0274MW (viewed October 2012)

51 For more detail, see Library Briefing Paper CBP-6585 Firefighters' Pension Scheme – current reforms (February 2015)

52 This is discussed in more detail in Library Briefing Paper CBP 8478 Public service pensions – facts and figures (January 2019)

53 HM Treasury, Spending Review – policy costings, October 2010

54 HC Deb, 28 April 2011, c555-6

55 '£1bn pension raid on council works is wrong and unsustainable', GMB press release, 26 October 2010

56 The Local Government Group includes the Local Government Association which is a "politically-led, cross-party organisation that works on behalf of councils to ensure local government has a strong, credible voice with national government"

achieved without even greater contribution increases (leading to the possibility of a vicious circle of even higher opt-out rates). It argued that – given the particular nature of the LGPS as a funded scheme - alternative ways of making the savings should be investigated.[57]

In a speech to the Local Government Association on 28 June 2011, the then Prime Minister, David Cameron, acknowledged that the different position of the LGPS:

> Of course, because it is a funded scheme, the Local Government Pension Scheme is different from other public sector pension schemes. That's why we will have a more in-depth discussion with local government unions and the TUC about how we take this into account. But the broad thrust of the wider reforms we are proposing will affect people in this room and your workforces.[58]

In July 2012, the then Chief Secretary to the Treasury, Danny Alexander, said the Government would take forward discussions with local government employers and trade unions on alternative ways to deliver some or all of the savings.[59]

In June 2012, the Local Government Association (LGA), UNISON, Unite and the GMB announced that they had agreed proposals for reform of the LGPS in England and Wales. One of the key features of the new scheme, to be introduced in April 2014 was that:

> There would be no normal scheme pension age, instead each member's Normal Pension Age (NPA) would be their State Pension Age (the current scheme has an NPA of 65).
>
> […]
>
> For current scheme members, benefits for service prior to 1st April are protected, including remaining 'Rule of 85' protection. Protected past service continues to be based on final salary and current NPA.[60]

For LGPS members, transitional protection would be provided by means of an 'underpin': with pension benefits earned before and after introduction of the new scheme calculated separately. Benefits earned before the date of change would be calculated on the basis of final pensionable pay at the point the pension is drawn or the member leaves service.[61]

In August 2012, they announced that consultation with members had revealed "overwhelming support" for the proposals.[62] The Government said a statutory national consultation would follow.[63]

The Department for Communities and Local Government (CLG) launched its consultation on Local Government Pension Scheme 2013 in June 2013 and

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57 Letter to Chancellor from Local Government Group, 16 February 2011
58 Prime Minister's speech to the Local Government Association Conference – 28 June 2011
59 HC Deb, 19 July 2011, c91-4; Letter from the Chief Secretary to the Treasury to TUC General Secretary, Brendan Barber, 18 July 2011
60 LGA media release 31 May 2012, Pension reform proposals agreed with unions; LGPS 2014 Joint Statement, 30 August 2012
61 LGPS 2014 - protection
62 LGPS 2014 Joint Statement, 30 August 2012
63 HC Deb, 17 July 2012, c123WS

responded in September 2013.[64] The details of the new scheme were provided for in the *Local Government Pension Scheme Regulations 2013 (SI 2013/2356)* and the *Local Government Pension Scheme (Scotland) Regulations 2015.*

Details of the consultation on the new scheme in Scotland are on the website of the Scottish Public Pensions Agency.

2.3 *Public Service Pensions Act 2013*

The *Public Service Pensions Bill* was introduced to the House of Commons on 13 September 2012. Primary legislation was needed to "create the framework necessary to enable changes to service pensions" in line its objectives and the recommendations of the Independent Public Service Pensions Commission.

The Library Briefing Paper for 2nd Reading in the Commons on 29 October 2012 is RP 12-57 Public Service Pensions Bill [Bill 70 of 2012/13] (October 2012). The debates at Commons Committee stage are discussed in RP 12-72 Public Service Pensions Bill: Committee Stage Report (November 2012) and the debates in the Lords in CBP-6572 (April 2013).

The *Public Service Pension Act 2013* received Royal Assent on 25 April 2013. The detailed rules of the new scheme are in regulations made under the Act.

The devolved administrations

In its October 2010 interim report, the Independent Public Service Pensions Commission noted that the devolved administrations had slightly different arrangements for administering public service pensions, although in practice the schemes mirrored each other closely:

> The devolved administrations have slightly different arrangements for administering public service pensions. For instance, Scottish Ministers have the power to make secondary legislation affecting how the five public service pension schemes operate (including, for example, the benefits the schemes provide and contributions made by scheme members). In practice the schemes have tended to mirror each other closely and they face similar structural issues.[65]

It recommended that the key design features of the new public service pensions should be part of a UK-wide policy framework:

> 5.26 Although pensions policy, including public service pensions policy, is set at a national level, a number of the public service pension schemes are the responsibility of the Devolved Administrations rather than the UK Government. There has been scope for some variations in terms to meet local circumstances, but the resulting pension schemes have essentially been the same as those established by the UK Government. That has, for example, helped to prevent pension terms becoming an obstacle to transfers

[64] CLG, Local Government Pension Scheme 2014. Consultation, June 2013; CLG, Local Government Pension Scheme 2014. Government response to the consultation, September 2013

[65] Independent Public Service Pensions Commission: Interim Report, 7 October 2010, p23-4

> of staff and skills within a sector of the public service. It seems reasonable to continue with this approach.
>
> 5.27 The key design features should be part of a UK-wide policy framework that extends to Scotland, Wales and Northern Ireland, with limited adaptations of other features to meet local circumstances.[66]

The *Public Service Pensions Act 2013* extends to England and Wales, Scotland and Northern Ireland.[67]

Section 2 and Schedule 2 of the Act provide that scheme regulations are to be made by the "responsibility authority" for the scheme (i.e. where regulation-making power is devolved, the Minister in the devolved administration). Scottish Minister have regulation-making powers for the schemes for: local government, teachers, NHS, firefighters and the police. Welsh Ministers have regulation-making power with respect to firefighters in Wales.[68]

Under section 3, responsible authorities have the power to make regulations including provision for any of the matters specified in Schedule 3. These include provision for death and injury benefits, employer and employee contribution rates. Regulations must be in accordance with the framework set by the Act. Examples of limitations this sets are:

- Section 8 which set constraints on the design of schemes, including requiring schemes that are Defined Benefit schemes to provide those benefits through a "career average revalued earnings scheme" (or CARE scheme) or such other description of defined benefits scheme as the Treasury may specify in regulations (but not a final salary scheme);
- Section 10 which required that members of the new schemes should have a normal pension age linked to their the State Pension, except for the schemes for firefighters, police and armed forces which must have a normal pension age of 60;
- Sections 11 and 12 required the new schemes to contain a mechanism for regular valuations of the scheme and to provide for a cap on the costs to employers of public service schemes;
- Section 18 required the closure of the existing schemes from 31 March 2015 (2014 for local government). The effect was to bring to an end benefit accrual under the existing schemes, except for those covered by transitional arrangements for those 'closest to retirement' (see below).

The Northern Ireland Executive agreed the introduction of reforms in line with those for Great Britain and legislated for them in the *Public Service Pensions Act (Northern Ireland) 2014*.

[66] Independent Public Service Pensions Commission: Final Report, 10 March 2011

[67] In the case of Northern Ireland, legislative competence for pensions for the armed forces and senior judiciary sits with Westminster -Public Service Pensions Act 2013 – Explanatory Notes, para 13

[68] Public Service Pensions Act 2013, Sch 2

For more detail, see section 5.2 of Library Research Paper RP 12/57 Public Service Pensions Bill [Bill 70 – 2012-13].

2.4 Expected impact

The Government's November 2011 document, Public Service Pensions: good pensions that last included case studies to illustrate the impact of the its proposals - in terms of the pension benefits accrued on retirement at different ages - under the existing schemes and the new schemes.

In terms of the impact on cost, there are different ways of presenting these.[69] The Independent Public Service Pensions Commission's preferred measure was the level of benefit payments as a percentage of GDP.[70] In its impact assessment for the *Public Service Pensions Bill 2012-13,* the Government estimated that Exchequer expenditure on unfunded public service pensions would fall:

> as a percentage of GDP from 2 per cent of GDP in 2015-16 to 1.3 per cent in 2060-61. This is 0.1 per cent lower than without the reforms resulting from this Bill. These costs would continue to marginally fall thereafter, until steady state is reached around 2090. [71]

In June 2018, it said spending on unfunded public service pensions was projected to fall gradually from around 2% of GDP to below 1.5% of GDP over the next 50 years. There were various reasons for this, including the impact of both historic and recent reform. [72]

In July 2020 consultation, the Government said the combined effect of the Coalition Governments reforms (the 2013 Act, the switch to the CPI and the increase in member contributions) had been to "reduce the forecast cost of public service pensions to the taxpayer by approximately £400 billion over 50 years."[73]

External analysis

The Institute for Fiscal Studies' 2012 Green Budget includes an analysis of the Coalition Government's reforms. It concluded that the reforms would "significantly reduce the generosity of these pensions for many public sector workers." It said they would "improve the structure of public service pensions" and that public sector workers would "continue to accrue pensions that are dramatically more generous than those accrued, on average, by private sector employees, few of whom have access to a defined benefit pension." It questioned whether the Coalition Government would have met its objective to put in place schemes that can be sustained for decades to come, given similar claims that had been made in the past.[74]

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69 For more detail, see Library Standard Note SN 6183 Public service pensions - background (August 2012)

70 Independent Public Service Pensions Commission: Final Report, para 1.18

71 HM Treasury, Public Service Pensions Bill: impact assessment, Sept 2012, para 3.57

72 Whole Government Accounts 2017-18, para 1.63-7

73 HM Treasury, Public service pensions: changes to the transitional arrangements to the 2015 schemes, July 2020

74 Carl Emmerson and Wenchao Jin, Public sector pensions and pay, IFS Green Budget, February 2012

On 23 October 2012, the Pensions Policy Institute (PPI) published a report on the impact of the reforms (the increase in member contributions, the switch to a Career Average Revalued Earnings Scheme and the linking of the normal pension age with the State Pension age) on the schemes for NHS, teachers, civil service and local government schemes.[75] It said they would reduce the average value of benefits offered across all scheme members by more than a third: from 23% of a scheme member's salary to 15%. It said the schemes would still be worth more on average than a private sector Defined Contribution scheme, about the same as a typical private sector DB scheme linked to the CPI, but less than one linked to the RPI.[76]

75 PPI, The implications of the Coalition Government's reforms for members of the public service pension schemes, October 2012

76 Ibid, p4; The switch to the CPI is discussed in more detail in Library Standard Note CBP 5656 Occupational pension increases (November 2018)

3. The reforms

3.1 Scheme design

Before the 2015 reforms, most of the existing public service schemes provided benefits based on final salary.[77]

The Independent Public Service Pensions Commission concluded that final salary schemes unfairly benefited high-fliers and exposed taxpayers to salary risk (as higher than expected salary rises increased the cost of providing pensions). Having looked at a range of alternative structures, the Commission recommended that a new career average revalued earnings (CARE) scheme should be adopted for general use in the public service schemes:

> Ex.14 The Commission's view is that defined benefit should continue to be the core design for public service pensions as an efficient design for a large employer to share risk with employees. But as set out in the interim report, and expanded further in this report, final salary does not provide the right design for future public service schemes. Final salary schemes unfairly benefit high flyers who can receive up to twice as much in pension payments per £100 of contributions. It exposes taxpayers to salary risk (the risk that higher than expected salary rises increase the cost of providing pensions), which should be borne by the scheme member who benefits from the salary rise. And final salary creates a barrier to employees moving from the public to private sector. These inherent problems of final salary schemes impact on fairness and sustainability and have led the Commission to conclude that an alternative model should be chosen for the future.
>
> Ex.15 Career average schemes allow pension to be accrued on the basis of earnings in each year of service. In these schemes future earnings do not affect past years' pension accrual so mobility between sectors is easier, salary risk remains with members and the unfairness of big benefits to high flyers is removed.
>
> Ex.16 So both career average and cash balance schemes could provide a good match against the Commission's principles and in terms of the distribution of risks between member and taxpayer. On balance, the Commission has decided to recommend career average as the option that provides more certainty for members, is better understood and will be more practical to implement. The Commission is not recommending specific levels for accrual rates, indexation and employee contributions as these determine cost, which is a matter for the Government. The Government will need to make a decision about these parameters after consultation with scheme members.[78]

Section 8 of the *Public Service Pension Schemes Act 2013* provided a "broad power to create pension and benefit schemes of different designs", including DB schemes, DC schemes and "schemes of any other description." Any DB scheme must be a CARE scheme, or another type of DB scheme

[77] With the exception of the nuvos section of the Civil Service Pension Scheme introduced in 2007 and the section of the NHS Pension Scheme for dental and medical practitioner members (SI 1995/300)

[78] Independent Public Service Pensions Commission: Final Report, 10 March 2011, p10; See also Independent Public Service Pensions Commission: Interim Report, 7 October 2010, p94

specified in regulations made by the Treasury. However, Treasury regulations may not specify a final salary scheme.[79]

The detail in each case was left for individual schemes to negotiate, in recognition of the fact that individual workforces had different requirements from their pension scheme. The Government set 'cost ceilings' within which alternatives to its preferred design (an accrual rate of 1/60th with benefits revalued annually in line with earnings) could be considered.[80]

In a CARE scheme, the proportion of pensionable pay an individual earns for a particular year of service needs to be revalued each year during active membership. The final pension is worked out by adding each year's revalued pension amounts together.[81] The rate at which pension benefits are revalued has a significant impact on the value of pension benefits at retirement. However, the rate at which benefits accrue each year is also important. The Commission explained that there is a trade-off between the two:

> 3.45 For a given cost, accrual rates will be more generous if a less generous indexation method is adopted, and visa versa. For example, earnings indexation will generally be more generous than prices indexation (since earnings typically outpace inflation over the medium to long term) and so the accrual rate will need to be lower in a CARE scheme with earnings indexation. Affordability for the new scheme design can therefore be achieved by the balancing of indexation method and accrual rates.[82]

Different accrual and indexation arrangements were agreed for each scheme. The details are now in scheme regulations.

The pension age

In its interim report in October 2010, the Commission said reforms to date had not gone far enough in responding to demographic change and did not significantly reduce current costs to taxpayers.

The Commission's final report in March 2011 recommended replacing the existing public service pension schemes with new ones by 2015. In most of these new schemes, members' normal pension age in the new schemes would be linked to their State Pension age (SPA). It said this link should be regularly reviewed, to make sure it is still appropriate, with a preference for keeping the two pension ages linked. For the uniformed services, the Commission recommended a normal pension age of 60, to be kept under review.

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 then legislated in the *Public Service Pensions Act*

79 Explanatory notes – para 53-7

80 Ibid, para 3.25

81 RP 12/57 Public Service Pensions Bill (October 2012), section 5.4

82 Independent Public Service Pensions Commission: Final Report, 10 March 2011; HM Treasury, Public Service Pensions: good pensions that last, Cm 8214, Nov 2011, Box 3C

2013 for a framework for the new schemes to be introduced for future service from 2015 (2014 for local government). Section 10 provided for normal pension age linked to the State Pension age, except for the schemes for firefighters, police and armed forces, which are to have a normal pension age of 60. There was protection for accrued rights and transitional protection arrangements to enable those 'closest to retirement' to remain in their existing schemes either until retirement, or for a limited period, depending on their date of birth.

The link to the State Pension age caused widespread concern among public sector unions, some of whom launched a '68 is too late' campaign. An area of particular debate was the impact on certain groups – such as paramedics, prison officers and MoD police and firefighters – given the demands of those roles.

There has also been disquiet about the impact of a pension age of 60 on some in the 'uniformed services.' The Fire Brigades Union has been campaigning for improved protection – particularly in England - for those firefighters unable to meet the demands of the role to age 60 but who do not qualify for an ill-health pension.[83]

For more detail, see Library Briefing Paper CBP-6581 Public service pension age (December 2019).

3.2 Transitional protection

Under its terms of reference, the Commission was asked to ensure that its recommendations protected accrued rights.[84] Its final report reiterated the principle that accrued rights should be protected:

> 7.24 The Commission takes as its starting point the principle that accrued rights must be protected, as stated in its terms of reference. For example, service earned on the basis of a specific pension age could not be changed without a member's consent and therefore pension rights earned up to the date of any change would be based on the current pension ages that apply to that service. To illustrate that, someone who had been earning benefits that would be paid on an unreduced basis from a Normal Pension Age (NPA) of 60 would continue to be able to take those pension rights earned up to the date of the change at age 60.
>
> 7.25 However, legally the full extent of those accrued rights is inherently uncertain. For example, general provisions of occupational pensions law require that an active member is at least awarded a deferred pension, but 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.[85]

In its final report published on 10 March 2012, 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

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83 Library Briefing Paper CBP 6585 Firefighters pension schemes – 2015 reforms

84 Independent Public Service Pensions Commission: Interim Report, 7 October 2010,

85 Independent Public Service Pensions Commission: Final Report, 10 March 2011

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.

Because its proposed pension age changes would apply to future service only, the Commission argued that existing members in their 50s should experience limited change to the benefit they would expect to accrue:

7.34 The Commission's expectation is that existing members who are currently in their 50s should, by and large, experience fairly limited change to the benefit which they would otherwise have expected to accrue by the time they reach their current scheme NPA. 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.

7.35 Those employees who intend to take their pension in the next few years could do so before the new terms are introduced. An employee now aged around 50 with many years of service in a scheme with an NPA of 60 would retain the link to his or her final salary for past service, while accruals from about the age of 55 would be under the new terms with a higher NPA. Although the exact impact of this will depend on individual circumstances and the scheme parameters, it is likely that most people currently in their early 50s will have a slightly lower pension if they choose to retire at their current pension age. Individuals could choose either to retire at the age of 60 with a slightly reduced pension, or work for a little longer in order to obtain the same pension income as that which would previously have been payable at 60.[86]

The Coalition Government's approach

Its November 2011 paper, [Public Service Pensions: Good Pensions that last] (Cm 8214), the Government said that although current workers would earn benefits in the new schemes for future service. It had "always been clear that it would protect the benefits that have already been earned by public service workers." said current workers could be assured that:

- they will be entitled to all they have already earned – their "accrued rights";
- in addition, for those in final salary schemes, the Government will calculate entitlement for pensions already earned using the final salary when the person retires or leaves the scheme, not their salary when the scheme closes;
- for those with 10 years or less to their pension age on 1 April 2012, the Government's objective is that they will see no

86 Ibid

> change in when they retire, nor any decrease in the amount of pension they receive at their current Normal Pension Age. Schemes specific discussions will determine the fairest way of achieving this objective, taking full account of the equalities impacts and legislation, while ensuring that costs to the taxpayer in each and every year do not exceed the Office for Budget Responsibility forecasts of public service pension costs, which do not take account of the further reforms set out in this document. [87]

In a statement to Parliament on 2 November 2011, the Chief Secretary to the Treasury said that he had listened to arguments 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."[88] He wrote to the the TUC General Secretary to say:

> I have accepted your argument that there should be transitional protection. It is my objective to ensure that those closest to retirement should not have any detriment either to when they can retire nor any decrease in the amount of pension they receive at their current Normal Pension Age. 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 – i.e. those forecasts made before the further reform set out in this letter.[89]

Section 18 of the *Public Service Pension Act 2013* provided that no benefits could be provided under the existing schemes after 31 March 2015 (except for local government, where the closing date was 31 March 2014). 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.

Section 20 and Schedule 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 the new scheme (not the point at which the final salary scheme was closed).[90]

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87 HM Treasury, Public Service Pensions – good pensions that last, November 2011

88 HC Deb 2 November 2011 c927WS

89 Lord Chancellor and Secretary of State for Justice v McCloud and Mostyn. Home Secretary and Welsh Ministers v Sargeant. 2018 EWCA Civ 2844

90 Public Service Pensions Act 2013 – Explanatory Notes, para 257

4. Impact of McCloud judgment

The transition protection arrangements under section 18 of the *Public Service Pensions Act 2013* (s18) were subject to two successful legal challenges, one against the judges' pension scheme (McCloud), the other against the firefighters' pension scheme (Sargeant), The claims were heard together.

In December 2018, the Court of Appeal determined, amongst other things, that transitional protection gave rise to unlawful age discrimination in the judges' and firefighters' pension schemes:

> 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.[91]

The Supreme Court refused the Government's application for permission to appeal.[92]

4.1 Remedies

The Court of Appeal remitted the matter to the Employment Tribunal to determine a remedy for the claimants.[93] On 18 November 2019, The Employment Tribunal issued an interim order relating to firefighters pending the final determination of all the remedy issues, anticipated in mid-July 2020.[94] 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 old scheme throughout. A Home Office factsheet explained:

> The Court of Appeal determined in its judgment in Sargeant that the transitional provisions in the Firefighters' pension schemes resulted in direct age discrimination between:
>
> a) those who were members of the old scheme (the Firefighters' Pension Scheme 1992) ("FPS") and were fully transitionally protected

91 Lord Chancellor and Secretary of State for Justice v McCloud and Mostyn. Home Secretary and Welsh Ministers v Sargeant [2018 ECWA Civ 2844]

92 Home Office, Sargeant factsheet, December 2019

93 HCWS1275 15 July 2019

94 Fire and Rescue Services National Employers Circular EMP/8/19, November 2019

> by remaining in that Scheme after 31st March 2015 as a result of being an active member under the 1992 Scheme on 31st March 2012,
>
> b) those who were members of the FPS as at 31st March 2012 and were not treated as fully transitionally protected and moved to the new English Firefighters' Pension Schemes after 31st March 2015,
>
> In the light of this, the Tribunal in the Sargeant case gave an interim declaration that the claimants (who all fell in within category (b)) are entitled to be treated as if they had been given full transitional protection and had remained in their current scheme after 1 April 2015.[95]

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."[96]

Similar Employment Tribunal claims were made by other groups, such as police officers, prison officers and Ministry of Defence Police.[97] The Government says it has agreed in a number of Employment Tribunal cases, that claimants should be entitled to membership of the appropriate legacy scheme.[98]

4.2 Consultation on transitional arrangements

The Government said on 15 July 2019 that the issues 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.[99]

It would extend the same treatment to all members of the main public service pension schemes in the same legal and factual position. In some cases, members not covered by transitional protection would be better-off in the new scheme. It would ensure that individuals could keep benefits they had accrued.[100]

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95 Home Office, Sargeant Factsheet, 20 December 2019; For the impact on the Police Pension Scheme, see Home Office, McCloud/Sargeant factsheet, December 2019

96 FBU press release, 18 December 2019

97 Home Office/police pension schemes/McCloud and Sargeant factsheet; Cabinet Office: Civil superannuation account 2017-18, December 2018, para 1.57

98 HM Treasury, Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Consultation, July 2020, p8-9

99 HCWS 1275 15 July 2019

100 Home Office, Sargeant Factsheet, 20 December 2019

Scheme by scheme discussions followed to determine an appropriate remedy.[101] The remedy would also apply to the LGPS, although that took a different approach to transitional protection - moving all members to the new CARE scheme but providing transitional protection via “a statutory underpin.”[102]

On 25 March 2020, Economic Secretary to the Treasury, John Glen, said the Government was considering 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.” It would set out its proposal to remove the discrimination for future service, and provide an update on the cost control mechanism, in a forthcoming consultation.[103]

HM Treasury launched a consultation in July 2020 on its proposals to remedy the unlawful discrimination identified by the Court of Appeal. They would apply to all members of affected public service pension schemes who were in service on or before 31 March 2012 and on or after 1 April 2015 (including those with a qualifying break in service of less than 5 years). This is irrespective of whether they have submitted a legal claim or not, or whether they are currently an active, deferred or pensioner member.[104]

The proposal is that 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 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.[105] Factors which may contribute to members being better off in the reformed schemes included: not having significant earnings growth from 2015 onwards; and choosing to retire after their legacy scheme’s NPA. Aside from the core pension, other details can vary between legacy and reformed schemes, such as contribution rates, survivors’ benefits and ill-health benefits. This means a decision on what scheme is best may depend on personal circumstances.[106]

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 uncertainty over the precise benefits that would accrue

[101] 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

[102] LGPS, McCloud case Q&A for administering authorities

[103] HCWS187, 25 March 2020

[104] HM Treasury, Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Consultation, July 2020, p3

[105] Ibid, p17

[106] Ibid, para 2.8

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.[107]

All members would ultimately be treated as though they were a member of either the relevant legacy or reformed scheme throughout the remedy period. There were extensive pros and cons to each option, with different impacts on different members, which the Government wished to explore and understand further.[108]

Technical issues that will need to be addressed include:

- where member contributions differ in the legacy and reformed schemes;
- member options exercised during the remedy period and re-visiting past decisions;
- the impact of choice on ill-health assessments and dependants' benefits;
- transfers and the operation of the public sector transfer club during the remedy period;
- abatement and divorce cases processed during the remedy period.[109]

The options also have tax implications:

> Changes in scheme benefits may affect individuals' tax positions for the remedy period. Any refunds due will be payable back to 2015. Any tax owed will only be collected in respect of the tax year of the member's choice and the preceding 4 full tax years (the statutory time limit for collecting additional tax). Due to the design of Deferred Choice Underpin, higher annual allowance tax charges may occur at the point when an individual makes their choice. In these cases, government will provide compensation for this additional annual allowance charge.[110]

Scope

The consultation proposals apply to all members who were in a relevant public service pension scheme on or before 31 March 2012 and remained in a relevant pension scheme on or after 1 April 2015. The schemes affected by this announcement are the main public service pension schemes managed by the UK Government, Welsh Government and Scottish Government. The Government's expectation is that all schemes in scope

107 Ibid para 2.44 and 2.52
108 Ibid, p 4
109 Ibid, Annex A; GAD, Technical Bulletin, July 2020
110 Ibid, Annex B; GAD, Technical Bulletin, July 2020

will adopt broadly the same solution for removing unlawful discrimination arising from transitional protection.

Changes to the Local Government Pension Scheme in England and Wales, and the equivalent scheme in Scotland, as well as the UK-wide judicial pension scheme and the public service pension schemes in Northern Ireland would be consulted on separately.[111]

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

4.3 The cost control mechanism

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 says these costs would "feed into future employer contribution rates once the 2020 scheme valuations are completed."[112]

For more detail, see

For more detail, see Library Briefing Paper CBP 6971 Public service pensions – the cost control mechanism (July 2020)

The Government said these counted as member costs for the purposes of the cost control mechanism:

> As the proposals in the consultation published today will increase the value of schemes to members, this falls into the 'member cost' category. As a 'member cost', this will be considered as part of the completion of the cost control element of the 2016 valuations process. Current employer contribution rates will not be affected.[113]

The cost control mechanism was introduced as part of the 2013 Act reforms, on the recommendation of the Independent Public Service Pensions Commission that there should be 'backstop protection' in case of unexpected increases in costs.[114] It is symmetrical, so that if 'member costs' rise or fall by more than 2% compared to a target rate, measures need to be taken to bring them back to target.[115] Member costs are those related to the profile of members, for example, the expectations about their life expectancy, growth in salaries, or career paths.[116]

111 HCWS380 16 July 2020; HM Treasury, Public service pension schemes: changes to the transitional arrangements to the 2015 schemes, July 2020, para 1.26-8 MHC&LG, LGPS – amendments to the statutory underpin, 16 July 2020; MoJ, Consultation on the proposed response to McCloud, July 2020

112 HM Treasury, Public service pension schemes: changes to the transitional arrangements to the 2015 schemes, July 2020

113 HCWS380 16 July 2020

114 Interim report, recommendation 12

115 *Public Service Pensions Act 2013*, s 12; *Public service pensions (employer cost cap) regulations 2014 (SI 2014/575)*

116 HM Treasury, Public service pensions: actuarial valuations and the employer cost cap mechanism, March 2014, para 2.24-6 and 2.31.3

In September 2018, the Government said that initial results of the first post-reform valuations (as at end March 2016) indicated that the cost cap mechanism would result in public sector workers getting "improved pension benefits for employment over the period April 2019 to March 2023."[117] However, in January 2019, it paused the operation of this because of uncertainty around costs until McCloud/Sargeant remedies were agreed.[118] On 25 April 2020, a group of public service trade unions – the Fire Brigades Union (FBU), the Prison Officers' Association (POA), the Public and Commercial Services Union (PCS) and the GMB – launched a legal challenge to this pause.[119]

On16 July 2020, the Government announced that it was lifting the pause because uncertainty about costs had receded. The costs of the McCloud remedy would be included as a 'member cost' and form part of the completion of the 2016 valuations. HM Treasury would prepare valuation directions explaining how this would work.[120]

Trade unions representing public sector workers opposed this, saying members should not have to cover the cost of the remedy process and that this was out of line with the original agreement.[121]

The NASUWT said it meant that the remedy would be paid out of cash meant for improving benefits in the Teachers' Pension Scheme. The result would be that teachers would "miss out on the benefits of this money, including mostly new teachers who the McCloud judgement does not apply to, who are therefore facing new discrimination."[122]

The Fire Brigades Union said it meant the Government was "seeking to amend (reduce) improvements to members' benefits in the 2015 scheme so as to pay for the government's unlawful discrimination against former members of the 1992 scheme.[123] The Public and Commercial Services Union said the costs of correcting the unlawful age discrimination should be borne by the Government, not by scheme members.[124]

4.4 Future pension options from 1 April 2022

The Government believes that "the reformed schemes initially introduced in 2015 provide an appropriate level of public service pension provision." It

117 HC Deb 6 September 2018 c13WS; Gov.UK, Public service pensions 2016 valuations: suppl. doc.

118 HCWS 1286 30 January 2019; PQ 294204 7 October 2019

119 'Firefighters to take government to court over 'pensions robbery'', FBU press release, 25 April 2020; See also POA press release 24 April 2020;

120 HCWS 380 16 July 2020; HM Treasury, Update on Cost Control Element of the 2016 valuations, July 2020; GAD, Public service pensions update, July 2020

121 FDA, Consultation on changes to transitional arrangements to the 2015 pension scheme, August 2020

122 Times Educational Supplement, Pension Court Case to cost teachers millions, 27 July 2020

123 Pensions: Age discrimination update, FBU circular, 16 July 2020

124 Government must pay for pension discrimination not scheme members, PCS press release, 16 July 2020

proposes retaining the core elements of the 2015 reforms – the switch to career average schemes and increases in the pension age:

> **Scheme design**
>
> 3.3 The move from final salary to career average design – a key recommendation of the Commission – has created a fairer system. Those with very considerable increases in their earnings over their career are no longer likely to be relatively favoured compared with their colleagues who did not enjoy such advantages. Indeed, as has become clear in the Tribunal process, many hundreds of thousands of members are likely to be better off in the reformed schemes than they would have been in the legacy schemes. Reversing the reforms for the future would make these members worse off.
>
> **Longer working lives**
>
> 3.4 As life expectancy has increased since the introduction of the legacy schemes, people should expect to have longer working lives. Most of the reformed schemes have a Normal Pension Age (NPA) linked to the member's State Pension age (the age at which a State Pension can be received). There are exceptions for the armed forces, the police and firefighters, where the NPA is set at 60 for those retiring from active service. Scheme members can choose to retire at a younger age than their NPA, as long as they have reached their Minimum Pension Age and their pension is adjusted to allow for payment before NPA. They can also choose to work beyond their NPA and receive a bigger pension.[125]

It says that from 1 April 2022, all members who are not already in the reformed schemes, and who are still accruing benefits in legacy schemes, will be placed into the 2015 reformed pension schemes.

The final salary link for members with prior service in final salary schemes would be retained; meaning for these members, benefits relating to membership of legacy final salary schemes would be based on pensionable pay on or near their retirement and not at the point they move to a reformed scheme.[126]

The Government intends to bring forward primary legislation to remove the transitional protection provisions and close legacy schemes completely for future service, for all members, from 1 April 2022.

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125 HM Treasury, Public service pension schemes: changes to the transitional arrangements to the 2015 schemes, July 2020

126 Ibid para 3.7-9; HCWS 380 16 July 2020

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