

Public service pension schemes: changes to the transitional arrangements to the 2015 schemes

GOVERNMENT RESPONSE TO CONSULTATION
(WITHOUT THE FLUFF – A PRÉCIS BY D FOUNTAIN, RELEVANCE FOR TEACHERS)

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Foreward – précis

RT HON Steve Barclay MP – Chief Secretary to the Treasury

- Flattery of public service workers
- Apportions blame for illegal transition period being introduced on negotiations between Government and the Unions.
- Consultation summary
 - Thanks employers, administrators, trade unions and others for partaking.
 - Majority backed the ‘deferred choice underpin’ (DCU)
 - Legacy schemes close legally on 31 March 2022.
 - All will enter reformed schemes on 1 April 2022.

Executive Summary - précis

Removing discrimination

- Transitional protection broke age discrimination laws.
- All public sector pension schemes with such transition protection affected.
- Unfair to put everyone back on to the legacy scheme as some may be better off under the reformed schemes.
- Eligible members will be able to choose between legacy and reformed schemes for their service between 1 April 2015 and 31 March 2022.
- Government intends to proceed with DCU (deferred choice underpin) option for members. Members choose at the time they claim their benefits with full knowledge of the benefits each scheme would provide.
- Eligibility: Those with service before 1 April 2012 and after 31 March 2015, service must count as continuous, though qualifying breaks of less than 5 years¹ will count as continuous.
- Eligible members can be active, deferred or retired.
- Choices cannot be made until new legislation is enacted but will be backdated.

Future pension provisions

- Sales pitch for the reformed schemes
- Reformed schemes are not discriminatory
- Legacy schemes close 31 March 2022
- Reformed schemes start 1 April 2022

Legislating to give effect to changes

- Legislation when parliamentary time allows to remove discrimination

¹ Wording here of concern. In the Teachers’ Pension Schemes a disqualifying break is one that is MORE than 5 years. The wording used in the summary would exclude a break of exactly 5 years.

Chapter 1

Introduction

- History and philosophy of why changes were introduced.
- Court case proved age discrimination and forced these changes

Consultation

- History of the process of consultation
- Scope of devolved responsibilities
 - UK Government: TPS in England and Wales

Stakeholder engagement

- A wide range of organisations included.

Responses to the consultation

- Summary of how many responses were received and from which stakeholders

Chapter 2 – Removing discrimination

Members in scope

- Must have:
 - Started before 3 March 2012
 - In service after 1 April 2015
 - No break of 5 years or more²
- Other members not in scope as the schemes they were put into were determined by when they joined, or the length of break they had, and **not** their age.

Equality impacts of proposals: Government response (in full)

- 2.19 The government has taken into consideration the unequal effects identified with the IC option, and intends to proceed with the DCU for this and the other reasons set out in this document, meaning these impacts will not materialise.
- 2.20 There is some evidence that the decision as to who should be in scope of the remedy may have differential impacts on specific groups. This is particularly by age group, but younger members in some workforces are also more likely to be women and from ethnic minority groups because some workforces have actively sought to improve the diversity of their workforce over the years. However, the government's view is that these changes will not have a disproportionate or otherwise unjustified impact on individuals with protected characteristics.
- 2.21 A number of respondents believed the proposals would continue to cause implications for people with protected characteristics, and these points have been carefully considered. As set out in paragraph 3.27, however, members of the reformed schemes can choose to retire at a younger age than their NPA, as long as there is an appropriate actuarial reduction to allow for the fact that the pension will be in payment for a longer period of time. Any change from one form of pension scheme to another will inevitably involve differences from the previous scheme, and the gender profile of those who are affected by the change, in the sense of being in employment at the point when the change occurs, will naturally reflect the gender profile of the scheme membership. But it is also important to bear in mind that both the legacy and the reformed schemes provide benefits on equal terms to all their members in respect of service accrued for the purposes of that scheme, regardless of gender, race or other characteristics. The discrimination identified in the McCloud litigation related to the arrangements for transition to the reformed schemes, and not to the terms of those schemes themselves.
- 2.22 These issues are explored further in Chapter 3.
- 2.23 The full assessment of the impact of the government's final decisions, and further detail on the responses received are set out in the updated Equality Impact Assessment published alongside this document.
- 2.24 Individual pension schemes will consult on the specific details of the implementation of these changes when they publish their draft regulations. The government will be able to consider any specific impacts of the detailed working-out of the policy for each scheme at that stage.

² Wording here of concern. In the Teachers' Pension Schemes a disqualifying break is one that is MORE than 5 years. The wording used in the summary would exclude a break of exactly 5 years.

Taper protected members

- 2.39 As set out in the consultation, the circumstances in which a member would benefit from having a mix of legacy and reformed scheme benefits are very limited, and affect a small number of individuals. Most members who were previously taper protected will be better off taking only legacy or reformed scheme benefits for the whole remedy period. Anyone who would have benefitted from such a mix of benefits under the original transitional proposals would have done so by chance rather than design.
- 2.40 Maintaining an age-based system of tapered protection would perpetuate or even extend one aspect of the discrimination which made the original proposals unlawful. It would be extremely challenging to develop and extend to the wider membership any form of tapered protection that was not based on age. Even if this were possible, it would be extremely complicated for schemes and members, and by definition would not replicate the original expectations of members. As a result, the government continues to believe that the removal of tapered protection, as set out in the consultation, is certainly the fairest approach, and may well be the only lawful approach.
- 2.41 The government recognises that the removal of tapered protection changes the expected position for previously tapered members, including to some extent the position in relation to pension for past years of service, and in some cases for members who have already retired. Its view, however, is that it is not right to continue to confer an advantage which represented one facet of what has been decided to be unjustifiably differential treatment on grounds of age. The fact that those with tapered protection will be over a certain age reflects the discriminatory nature of the original provision, and the government does not consider that the removal of that unjustified discrimination can itself be considered a discriminatory act. To the extent that removal has a retrospective effect, the government considers that it is justified for the reasons above, especially bearing in mind that all those who were subject to tapered protection will have the choice of legacy or reformed scheme membership for the remedy period, and that any additional advantage beyond that was always a fortuitous one. As some respondents recognised, moreover, offering all relevant members choice to accrue a mix of legacy and reformed scheme benefits, in whatever combination they felt may suit them best, would be entirely unworkable. Where pensions benefits are adjusted for taper protected members who have already retired, the government will ensure that schemes take a proportionate approach to the recoupment of any overpaid benefits, including ensuring any overpayment can be collected over time.

Proposals for removing discrimination: immediate choice and deferred choice underpin: GR

- 2.62 Following consideration of the wide range of views expressed through the consultation, the government now intends to proceed with addressing the discrimination by implementing the DCU.
- 2.63 The government believes that by deferring the choice between legacy and reformed scheme benefits until the point at which benefits are paid (for many members, the point of retirement), most members will have significantly greater certainty over their benefit entitlements when making this decision, and that this is by some margin the most important consideration here. In most cases, there would be no actual financial advantage to members in being able to make an immediate choice, although the points made above in relation to the firefighters and police schemes in relation to potential contributions' deficits depending on benefits ultimately selected have been noted, and as noted above it is considering whether further mitigating measures may be available in that context.
- 2.64 Some of the responses from individuals suggested that they are starting from an assumption that the legacy pension arrangements are more generous. However, as the consultation set out, depending on a person's circumstances, many scheme members are likely to be better off in the

reformed schemes than the legacy schemes. The government believes it is therefore not fair to simply move everyone back into the legacy schemes for the remedy period without providing a choice. Under the DCU, members will be able to make the decision on known benefit entitlements at the end of a career, in order to choose the scheme that is better for them. Although the government considers that some organisations' concerns about potential legal liability are overstated, it is to the advantage of all concerned if members receive information on their benefits and are in this way assisted to make the right choices.

- 2.65 Making the choice between legacy and reformed scheme benefits at the point a pension comes into payment means that the majority of members in scope of remedy will not confirm the benefits they will receive until they take those benefits (although they would know the value of the benefits available to them under both options). Respondents raised this uncertainty as a concern with this proposal. To mitigate against this uncertainty, the government will require schemes to provide details annually of the accrued benefits available to members in relation to relevant service for both the legacy and reformed scheme. This will provide members with visibility over their expected benefit entitlements for the remedy period in advance of their decision. Further detail on this is provided in Annex A.
- 2.66 A small number of respondents raised the potential option of making an individual choice on whether to have an immediate choice or a deferred choice. Similarly, others raised the option of an "Anytime Choice", where members could choose the point at which they made the decision about which benefits to take. However, this would be considerably more complex to administer, but more fundamentally would still incur the substantial risk that members make choices which ultimately turn out to be less beneficial. The government believes that the provision of information to scheme members on their potential benefits through benefit statements should mitigate against uncertainty and ensure members are able to plan for retirement effectively.

Administrative impacts of IC and DCU

Working with schemes to implement changes

- 2.76 Responses to the consultation recognised the scale of the administrative challenge of proceeding with the DCU. Scheme administrators will be required to run two sets of benefit designs alongside one another for over 40 years to deliver this remedy. Scheme administrators already run several legacy schemes alongside the reformed schemes, and most members in reformed schemes at present also have rights in a legacy scheme that are still linked to their current and future earnings. However, under DCU, schemes will be calculating benefit accrual over the period from 2015 to 2022 on the basis of two benefit designs instead of one. In addition, as set out in the consultation, considerable work will be required in the short term to move many members of the reformed schemes back to their legacy schemes for the remedy period, as well as resolving cases of members who have retired or died since April 2015. Set against this is that DCU operates over a longer time period, unlike an Immediate Choice exercise that would require ensuring that millions of members could make an informed choice about their pension provision within a relatively short time period.
- 2.77 Before schemes and administrators can make progress with introducing new processes and IT systems to deliver the DCU, further technical policy decisions need to be made and the necessary legislation, both primary and secondary, needs to be passed. Further complexity is present for the locally administered schemes.
- 2.78 The government has taken into consideration the concerns raised by respondents on the administrative challenges posed by the delivery of remedy. If schemes and administrators do not have time to build proper processes and systems to deliver the remedy, the risk of mistakes being made is considerably greater, which will have a detrimental impact on members. In the meantime, however, the discrimination that the courts have identified is continuing.

- 2.79 As a result, the government intends to pursue an alternative timetable for the delivery of these changes. As previously set out, the remedy period will end on 31 March 2022 and members will be moved into the reformed schemes from 1 April 2022. This will bring any remaining current discrimination to an end as rapidly as possible, by ensuring all members are treated equally with regard to future accrual. However, schemes and administrators will be given flexibility on the time needed to establish systems to deliver the retrospective changes to the remedy period. The primary legislation will state that retrospective changes must be introduced by 1 October 2023, but will allow schemes that can begin implementation sooner to specify an earlier date for this change in their regulations.
- 2.80 This means that after 1 April 2022, everyone will be treated the same, but full correction of the discrimination that occurred after 2015 will not happen until later. The impact on members who will retire before the date set out in their scheme regulations is set out in paragraphs 2.99 to 2.105.
- 2.81 Any additional time will allow for government to provide scheme administrators with answers to complex policy questions, whilst also providing scheme administrators the time needed to establish robust systems to deliver the DCU properly and to communicate the changes to their affected members.
- 2.82 The government believes this is a fair way to ensure that the discrimination is ended as soon as possible, while giving schemes and administrators flexibility to build the systems they need to ensure the DCU is delivered effectively.

Tax implications of DCU

- 2.91 Under the DCU, reformed scheme members will be legally restored to membership of their legacy schemes by 2023 in respect of the remedy period. This will retrospectively alter the pension benefits they have accrued in each of the tax years during the remedy period. For the minority of members with sufficiently high income and/or pension accrual to trigger an AA charge, this could change their liability for that AA charge in a tax year or tax years falling within the remedy period. Most of these individuals will see a reduction in AA charge owed.
- 2.92 Where an individual paid their original AA charge up front, they will receive a refund. If the individual originally used Scheme Pays to meet the tax charge, then the associated pension debit will be amended as appropriate, and schemes will receive the refund. In those cases where additional AA charge is owed, the individual will have the opportunity to utilise Scheme Pays if they do not want to pay the tax charge upfront.
- 2.93 If a member then faces an increased AA charge as a result of choosing reformed scheme benefits when they take their benefits, the government will ensure they do not bear the cost of any additional AA charge that is directly caused by the member exercising that choice.
- 2.94 Tax adjustments will also be required in those cases where the amount of pension contributions that a member should have paid changes: either in 2023, at the point they receive their benefits, or both. As set out in the consultation, where an individual owes more contributions, they will receive tax relief on those contributions at their marginal tax rate in the tax year the additional contributions are paid. The government recognises that in some cases this may result in less tax relief than the individual would have received had the individual paid those contributions in the relevant remedy period years. In these cases, it will be possible for members to apply for compensation for the difference in the tax relief received.
- 2.95 The original consultation suggested that where an individual was owed a return of overpaid contributions, the excess amount would be returned to individuals, and the tax owed in respect of the income used to fund the excess contributions would be collected, but only for those years within the usual statutory time limits. Following the consultation, the government has decided that individuals will receive a payment to cover the value of their contributions, but with an amount deducted to reflect the underpaid tax. This departs from the position set out in the

original consultation which set out that that individuals who had overpaid their contributions in remedy period years beyond the usual statutory time limits for tax collection would receive a full refund of contributions and not face any tax charge.

- 2.96 There are two reasons for this decision. First, the government agrees with those respondents to the consultation who urged that, as far as possible, individuals should be put back in the position in which they would have been, absent the discrimination. Second, as set out above, some consultation responses highlighted how the operation of statutory time limits for the collection of tax could give younger members an advantage over older members, when those younger members move into their legacy schemes in 2023. Repaying an amount reflecting the value of overpaid contributions with tax deducted will help to minimise any potential “windfall” advantage being enjoyed by one group of members over another.
- 2.97 Tax adjustments will also be required for individuals who have retired during the remedy period and who wish to receive different pension benefits. This is dealt with in more detail in the next section.
- 2.98 The government acknowledges the points made by consultees on the complexity of correcting members’ tax positions historically. Where possible, the government will take proportionate steps to minimise the administrative burden on members, but it will not be possible to completely remove this burden in all cases. A member’s tax position is unique to their personal circumstances and they alone may hold some of the data necessary to correct some elements of their tax position, particularly regarding their AA position. The government acknowledges the need to provide clear and accurate communications and information to members going through this process. However, the necessary tax corrections following the implementation of the DCU will still place an administrative burden on some individuals, particularly those affected by the annual allowance.

Members who retire or receive pension benefits before the DCU is introduced

- 2.99 The majority of members in scope of this consultation will not retire until after the DCU is implemented and will be given their choice at the point of retirement, as detailed above. However, the government recognises that significant numbers of members have already retired and received pension benefits in respect of relevant periods service or will do so between now and the introduction of the DCU by October 2023.
- 2.100 As set out in the consultation, the government accepts that members who moved to the reformed pension schemes on or after 1 April 2015 and have subsequently retired, already have an entitlement to be treated as a member of their legacy scheme for the remedy period if they wish. In recognition of this, the government will work with schemes to develop processes to give effect to this entitlement for those who retire before the introduction of the DCU. Where possible, schemes will also seek to offer reformed scheme members in this position who retire before October 2023 a choice of legacy or reformed scheme benefits for the relevant period at retirement. Once the complex issues described in paragraphs A.8 to
- A.12 have been resolved, schemes will also seek to revisit cases of reformed scheme members who have already retired ahead of the introduction of the DCU, where, and to the extent, this is possible. This process will be administratively complex and individual schemes will set out their plans for beginning to process such cases in due course.
- 2.101 It is important to note that, where members choose to change schemes, they may in some cases have to repay benefits that they have already received. Where this is so, or payment of additional contributions may be required, this will be made clear to members when making their choice.
- 2.102 As discussed in more detail in paragraph 2.95, if the benefits a member has received change as a result of the implementation of the DCU, then tax adjustments may be required. This includes

where an individual has already retired and received pension benefits in respect of relevant periods of service, or will do so between now and the introduction of the DCU by 2023.

- 2.103 Where an individual receives a revised pension award, this will be backdated to the date their pension award was originally made. If this results in an increase in pension payments, this will be paid in a lump sum in the year that the individual's pension situation is corrected. It will be taxed in that year, at the individual's marginal tax rate at that time.
- 2.104 The consultation document set out that where tax is owed on pension income by a member who has retired, it will not be collected for periods beyond the usual statutory time limits. However, because backdated pension will be paid all at once in a single year, and tax will be due in that year, then all that backdated pension will fall within the usual statutory time limits for tax collection.
- 2.105 In some cases an individual could pay more tax on their backdated pension than they would have done had they always been in receipt of those pension benefits, for example, if the backdated payment increased their total income so that a higher marginal rate of tax would apply. In this case, individuals can apply to their pension scheme to have the backdated payment allocated to the relevant remedy period years, and then to HMRC to have the remedy period marginal rates applied.

Chapter 3 Future pension provision

The reforms and the 2015 schemes

- 3.19 Many respondents to the consultation believed that the legacy schemes are inherently more beneficial for all members. This is not the case and whilst it is recognised that there is significant variation across schemes; many members will be better off under reformed scheme arrangements than they would have been in the legacy schemes. The career average pension schemes ensure members accrue their pension at a typically higher annual rate based on their average salary. Although some members are likely to be better off in their legacy scheme, others, particularly lower paid members, are likely to be better off in the reformed schemes. This is why members will be offered a choice of benefits for the remedy period.
- 3.20 It is not correct to assume that the reformed schemes are detrimental to all members. The reformed schemes are more generous for many lower paid members. 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 have such career progression. The move from mostly final salary to career average design has, therefore, allowed for a fairer system. Reversing the reforms for the future would make many members worse off.
- 3.21 It is also important to clarify that the reformed schemes were not found to be discriminatory, as some respondents to the consultation believe. The judgments of the courts were that the transitional protection arrangements discriminated against some members; not the reforms or the reformed schemes themselves.
- 3.22 Some respondents believe that it is unfair for pension arrangements to be changed at all, and that all members should be able to retire in line with the arrangements as they were when they entered service. Whilst the government is committed to ensuring that public service workers are rewarded with generous pension provision in their retirement, it is also right that it continues to assess this, and makes appropriate changes – such as those recommended by the Independent Public Service Pensions Commission (the Commission) as part of the 2015 reforms – when it is necessary to do so.
- 3.23 The Commission was established with the aim of ensuring public service pensions were affordable and sustainable in the long term. For Great Britain, the total annual cost of paying out unfunded public service pension scheme benefits is considerable; £44.3 billion in 2019-20. It is important that these costs are kept under control. Additionally, life expectancy has increased significantly since the introduction of the legacy schemes, which increased the cost to the taxpayer. Outside of public service schemes, individuals need to save more for a longer retirement resulting from increased longevity. The reformed public service schemes are designed on the basis of a longer working life to cover the cost of a longer retirement, as will be the case across the wider workforce.
- 3.24 The Independent Public Service Pensions Commission made recommendations that led to the reformed schemes being established under the Public Service Pensions Act 2013, in line with the objectives of ensuring affordability and sustainability, and the reformed schemes were accepted by the majority of trade unions and other member representatives.
- 3.25 Some respondents argued that the changes to pension ages are unfair, and inherently discriminatory against younger members, as they are required to work for longer.
- 3.26 Most of the reformed schemes have a Normal Pension Age (NPA) linked to the member's State Pension Age (SPA; the age at which a State Pension can be received) which reflect the increases in life expectancy. There are exceptions for the armed forces, the police and firefighters, where the NPA is set at 60 for those retiring from active service.
- 3.27 Members of all reformed schemes can, however, choose to retire at a younger age than their NPA, as long as they have reached their Minimum Pension Age (MPA) and an actuarial

adjustment is made to their pension to allow for the fact that it will likely be paid for a longer period of time. Members can also choose to work beyond their NPA and receive a bigger pension.

- 3.28 The reformed schemes are among the best available in the workplace: backed by the taxpayer; index-linked; and offering guaranteed benefits on retirement. They compare very favourably to the typical scheme in the private sector. The government believes that these schemes represent generous pension provision for public service workers; and that the changes made as part of the reforms were necessary to ensure that this provision remains sustainable. This is why the government intends that all those in service from 1 April 2022 will be members of these schemes.

Ensuring equality of treatment

- 3.29 It is also important that the arrangements for future provision ensure equal treatment in terms of the scheme design available to members after the remedy period ends. If some members remain in different schemes, that objective would not be achieved.
- 3.30 Some respondents noted that some of those who are offered the choice of benefits as part of the remedy proposals will reach retirement before they are required to accrue any benefits in the reformed schemes, whereas others will need to continue in service after 31 March 2022 to reach retirement age, and will do so as members of their respective reformed schemes. They argued that this would discriminate against them based on their age.
- 3.31 The proposals to address the discrimination will mean that more people will have access to legacy benefits up to 31 March 2022 than would have otherwise been the case. Some of these members will retire before this date and before any accrual in the reformed schemes; whereas others will continue in service after 31 March 2022 as members of the reformed schemes, like those who joined after 2012 who will remain in the reformed schemes. The government does not believe, however, that this leads to further discrimination because all members are treated equally in respect of any period of service from 1 April 2022.
- 3.32 The proposals to address the discrimination mean that all those who were denied transitional protection and continued access to legacy scheme benefits as a result of their age will be treated equally to those who were originally offered such protection, for the period in question. The proposals for future arrangements will treat all members equally after that period, in terms of the scheme design available to them – anyone in service will accrue in the reformed schemes for any service from 1 April 2022.
- 3.33 By 1 April 2022, those who were offered full transitional protection by virtue of being within 10 years of their NPA in the legacy schemes will have reached that NPA. Where these members choose to remain in employment from 1 April 2022, they will do so with an entitlement to be members of reformed schemes, like all other members. They will of course still be afforded a choice of scheme benefits for the period between 2015 and 2022, as a result of the remedy proposals.
- 3.34 Whilst there will be differences in the specifics of overall pension provision for different members across the course of their career, depending on the point at which they began their service, this will always be the case when changes to pension schemes are introduced. This is the case with past cohorts of members, as a result of previous changes.
- 3.35 It is right that the government has the ability to make changes when it judges it necessary to do so. The original objectives and recommendations of the Commission leading to the 2015 reforms and the reformed schemes still hold. The government believes that these schemes are the correct basis for future arrangements and remains committed to them. The plans also ensure equality of treatment in respect of scheme membership. From 1 April 2022, anyone who remains in service will do so with an entitlement to be a member of their respective reformed

scheme, regardless of their age or any other factor. All members will therefore be treated equally in that respect.

- 3.36 Some respondents also believed that members in scope of remedy who choose to accrue legacy benefits during the remedy period (or those who already had access to such benefits, as a result of transitional protection arrangements) have a legitimate expectation of being able to remain in the legacy schemes beyond this date, until they choose to retire. In introducing the reformed schemes, however, it was never the government's intention that the legacy schemes would continue indefinitely. Members in scope will have had 20 months' notice (since consultation) of these plans, which are necessary to implement the reforms, for which the rationale still stands, and to do so in a way that treats all members equally in terms of their scheme eligibility and scheme design available to them, after the discrimination has been addressed.
- 3.37 The Public Services Pensions Act established that no new benefits related to future service would be provided under the legacy schemes in relation to employment after 1 April 2015. Exceptions to this were made in scheme regulations, but these were intended to be limited in their nature, because they were applied only to members who were within 10 years of their NPA under the legacy schemes, and the majority of these members are expected to have retired already or to do so in the coming years.
- 3.38 Whilst the courts found that these exceptions gave rise to unlawful discrimination, and government has now set out its proposals that those in service on 31 March 2012 and who have relevant service after 1 April 2015 will be offered a choice of legacy schemes for the remedy period, this does not mean that disparity of treatment should continue indefinitely. Many of this group could be expected to remain in pensionable employment for many years, long after it was envisaged that the legacy schemes would be closed. If one group should be afforded different provision to other members, this would not meet the objective of ensuring equality of treatment, and this would also increase taxpayer costs by many billions of pounds, by indefinitely extending the period during which members could choose between scheme designs for service from April 2015 onwards.
- 3.39 Members of the legacy schemes will have had more than 20 months' notice of the government's plans by 1 April 2022. The judgment of the Court of Appeal also set out why the transitional protection arrangements and the original aim to protect those who were eligible, was in fact not justified. These members will also, of course, be able to participate in the reformed schemes in relation to any eligible employment from 1 April 2022 onwards. Bringing the remedy period to an end as soon as reasonably practicable will also minimise the extent to which those whose employment started during the remedy period are differently treated.
- 3.40 Under these plans, those who were denied transitional protection because of their age will be offered the same benefits as those who were fully protected, for the remedy period; thereby addressing the discrimination identified by the courts. Thereafter, all those who remain in service will be treated equally in respect of scheme design provided to them. Accrued rights
- 3.41 Some respondents were worried that if they are 'moved' from legacy to reformed schemes from 1 April 2022, for the remainder of their service, that their pension will be less valuable. It is important to note that the proposals will only affect future service from that date, and will not (subject to some issues around taper protection, that affect a very small minority of people, as discussed above) impact on pension already accrued.
- 3.42 Whilst accrual in legacy schemes will end when those schemes are closed on 31 March 2022, any accrual that has been built up in the legacy schemes up to that date, and the NPA at which the benefits accrued in those schemes can be taken in full, is protected.
- 3.43 Whilst the reformed schemes are career average schemes, the 'final salary link' is also protected. This means that all the accrual in a final salary legacy scheme will be calculated in relation to a member's final salary when they retire or otherwise leave the scheme, regardless

of how many years' service was spent in the reformed schemes, and not their salary at the point when they left the legacy scheme.

- 3.44 Other accrued rights, such as the improved accrual rate linked to length of service for some schemes (namely older police and firefighters schemes) are also protected in relation to service in those legacy schemes.
- 3.45 Additionally, as set out in paragraph 3.27, since the legacy schemes have a lower NPA than the reformed schemes, members who have accrued service in both types of scheme may choose to retire when they reach that NPA, and the relevant MPA has been reached, and access the relevant pension benefits from both schemes. They will not have to wait until the NPA in the reformed scheme, which in most schemes is linked to SPA. Scheme specific issues
- 3.46 Some respondents have pointed out that, due to the service length-based specifics of some schemes (namely older police and firefighters schemes), they expected to retire at a particular point in time, when their legacy scheme benefits would be most valuable to them. If this point is after 31 March 2022, they will now be required to accrue benefits for a period in the reformed schemes; as with all other members. If the point at which they were expecting, and want, to access their legacy benefits – because they have reached their expected service length - is a point at which they have yet to reach the MPA of the reformed schemes, accessing their legacy benefits will mean that they will become a deferred member of the reformed schemes. Whilst this does not preclude them from retiring and accessing benefits in both schemes, the reformed scheme benefit payments will then be actuarially reduced not from the NPA (which would be the case if they had reached MPA) - which in the schemes in question is lower than SPA - but from SPA.
- 3.47 Some respondents contended that this means the proposals for future service do not equalise treatment from 1 April 2022, after the remedy period has ended. This is because two members who joined on the same day, and thus reach their expected maximum service in the legacy schemes at the same point in time, will be treated differently because of their age – depending on the age when they joined, they may or may not have reached the MPA in the reformed schemes at this point.
- 3.48 Whilst the government acknowledges this point, it does not believe that the proposals for future arrangements constitute discrimination on the grounds of age. Those who begin service at the same point in time, but who are of different ages, will often likely retire at different points in time. If changes to pension arrangements are made – when the government judges that it is necessary to make such changes – this might mean individuals finish their career under different pension arrangements, that the precise nature of the benefits accrued across the course of their careers is different, and that they retire at a later age.
- 3.49 Under the proposals, the service and benefits accrued under the legacy arrangements is protected, and treated equally; any service from 1 April 2022 will be under reformed scheme arrangements, for everyone, regardless of age or any other factor.
- 3.50 The government acknowledges that many respondents have a desire to maintain their current arrangements until the point at which they retire, even if this is after 1 April 2022; but the government does not believe it would be fair to allow some members, and not others, to continue under different arrangements and as members of different schemes, after the discrimination has been addressed and the remedy period ends.
- 3.51 The government also appreciates that some members had intended to retire at a particular age or point in time, and that may not now be possible for some. Members will, however, have been given 20 months' notice of the proposals for arrangements after the discrimination is addressed. The government must have the ability to make changes so that public service pension provision is affordable and sustainable in the long term. The proposals do this in a way that treats all members equally in terms of the scheme design available to them for service from 1 April 2022 onwards.

- 3.52 The government does, however, understand these scheme specific complications as a result of the service-based conditions of some legacy schemes. Whilst this does not change the overall proposal for future arrangements across all public service pension schemes set out here, relevant departments will consider specific issues highlighted by some respondents in due course. Final position on future arrangements
- 3.53 The government has carefully considered the responses to the consultation and the issues raised on its proposals for future arrangements after the discrimination identified by the courts has been addressed.
- 3.54 The government believes that the proposal that anyone who remains in service from 1 April 2022 will do so as a member of their respective reformed scheme is right and ensures equal treatment in terms of scheme membership.
- 3.55 The government believes that the reformed schemes, of which most public service workers are already members, offer generous pension provision to public service workers, whilst also offering protection for the taxpayer against unsustainable costs. The rationale for the reforms still stands. It is also right that anyone who remains in service will be eligible to do so as a member of these schemes, and is not treated differently by being able to remain in legacy arrangements.
- 3.56 The government will therefore proceed to develop the primary legislation necessary to close the legacy schemes to further accrual on 31 March 2022, remove the transitional protection arrangements that were found to be discriminatory, and ensure that all future service is under reformed scheme arrangements.

Annex A Response to technical questions Revisiting past cases

Approach

- A.8 Following analysis of consultation responses, and further policy analysis, the government confirms that all members with service during the remedy period will be given a choice as to whether they wish to receive legacy or reformed scheme benefits in respect of that period, including pensioner members.
- A.9 For pensioner members who choose to receive alternative benefits to those already in payment, entitlements will be backdated to the date that pension commenced. Any additional amounts due will be paid from the scheme and subject to tax and any overpayments that arise will need to be repaid by the member. Overpayments will only arise where a member chooses to elect to receive alternative benefits to those already in payment or, in some cases, where the removal of taper protection (as set out in paragraphs 2.39 – 2.41) leads to a change in entitlement.
- A.10 Correcting payments retrospectively will be complex in some cases. We will continue to work on the details to ensure that members are placed in the position that they would have been in had the DCU been in place at the time that their benefits, relating to their service since 1 April 2015, began to be paid.
- A.11 As set out in the consultation, where an actuarial adjustment is required with regards to the pension in payment that a member could alternatively choose, then the actuarial factors in force at the date they retired with benefits earned during the remedy period will be used in determining the benefits payable to the member. This will ensure that the pension is retrospectively corrected to the same level it would have been if the member had had access to it at that retirement and that pensioner members are treated in the same way as other members in implementing the DCU.
- A.12 Further detail on the treatment of cases for members who retire or receive pension benefits before the DCU is introduced can be found in Chapter 2, paragraph 2.99 to 2.105.

Member contributions and interest

- A.13 Question 11 sought views on the government's proposals to ensure that correct member contributions are paid in schemes where they differ between legacy and reformed schemes. The consultation set out that under the DCU, the government would propose to adopt a two-stage approach. The first stage would occur shortly after the implementation of the DCU and would involve retrospectively applying (as appropriate) a charge upon, or a refund to all members by reference to their legacy scheme contributions. The second stage would then be at the point a member made their deferred choice where, if reformed scheme benefits are chosen, the balance of contributions that would have been due under the reformed scheme in the remedy period would be charged or refunded as appropriate, again retrospectively.

Approach

- A.29 The government has noted the concerns raised with the approach set out in the consultation, however, the government considers that it is necessary to charge members the appropriate contributions for the benefits they accrue and to do so in a way that ensures members are treated equally. In removing the discrimination identified by the courts, the government is taking steps to place individuals back into the position that they would have been in but for the discrimination and ensuring that all members with relevant periods of service are treated equally in respect of that service. If members who are moved to the legacy arrangements were not charged contributions at the rate payable in respect of other members for the same period of service, there would be a difference in treatment and the government does not consider this would be appropriate or justified.
- A.30 For this reason, member contributions will be adjusted under the DCU, as set out in the consultation document at paragraph A.9. This will involve a first stage when members are

moved to the legacy scheme in respect of any relevant service between 1 April 2015 and 31 March 2022. Where a member has paid higher contributions in respect of any period than are due under the legacy scheme, the difference will be paid to the member. Where a member has paid lower contributions than those due, they will owe the difference to the scheme. The second stage will apply where a member in scope of the DCU elects to receive benefits equivalent to those that would have been paid had they instead been a member of the reformed scheme in respect of the relevant period. In such cases, any difference in contributions paid to the legacy scheme compared to those that would have been paid to the reformed scheme will be corrected, with the member paying a shortfall to the scheme or the scheme paying any overpayment to the member. The two stages will ensure that members have paid the correct contributions for the benefits that they choose to receive.

- A.31 Respondents to the consultation tended to support charging interest on sums owed to members, however many respondents argued that interest should not be charged on sums owed to schemes.
- A.32 The government considers that it is right to add a reasonable rate of interest to sums owed to schemes and sums owed to members. This is because a member who underpaid employee contributions could have invested the additional money needed for those contributions over time and earned interest on that investment; or spent it on items that they might otherwise not have been able to afford. Their comparators in the scheme will have been paying the correct level of contributions throughout, so would not have had the benefit of the additional money over time. The government consider that interest should be applied to money owed to ensure fair and equal treatment of members.
- A.33 As set out in the consultation, members will be given the opportunity to repay any sums owed upfront or over time.
- A.34 The government considers that it will be desirable for it to prescribe appropriate rates of interest centrally to ensure consistency, and to recognise the fact that the issue of owed contributions – and refunds – will remain for decades. The majority of respondents to the questions on interest in the consultation supported this position. The government will consult the Government Actuary on the appropriate rate of interest to add to sums owed to and by members.

Voluntary member contributions (VMCs)

A.35 Question 12 asked for comments on the proposed treatment of voluntary member contributions that individuals have already made. The consultation set out that additional benefits purchased via VMCs in the remedy period could be converted to an equivalent value of Added Pension (AP) in the scheme that the member is not currently in. This equivalent value of AP would only come into payment where they chose to join the alternative scheme design for the remedy period. If a member's original scheme design was chosen, then they would keep the additional benefit originally purchased. However, the value of the AP in the alternative scheme will be shown on the member's benefit statement.

Approach

A.45 After reviewing responses, and through further engagement with schemes, the government is 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. A.46 The technical detail of how this will be implemented in each scheme will be decided through scheme level discussions, and subsequent consultations on secondary legislation (scheme regulations).

Annual benefit information statements

A.47 Question 13 asked for comments on the government's proposed treatment of annual benefit statements, which are provided to active members. The consultation set out that, under the DCU option, scheme administrators would be required 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).

Approach

- A.56 The government consider that it is important that members receive information about the alternative benefits available to them under the DCU. The government considered that extending annual benefit information statements to include this information is the best approach for active members, whilst recognising the need for this information to be clearly communicated.
- A.57 Some respondents raised concerns that the provision of two sets of information may not be meaningful until a member nears retirement. The government continues to believe that this information should be provided to all those in scope of the remedy, as members will want to be informed about the current value of their pension rights to help with their retirement planning, which they may start to do many years from retirement.
- A.58 Information will also need to be provided to affected members who are already in receipt of their pension, to enable them to take decisions about the benefits they wish to receive in respect of any period of relevant service. Deferred members will also need to be provided with information prior to the commencement of their pension and on request, in the same way that information is being included for active members of the schemes.
- A.59 To address implementation challenges, the government has worked with schemes to provide flexibility on administration timelines and has agreed to provide additional time for implementation of the DCU, set out in more detail in Chapter 2. This is intended to reduce the pressure on scheme administrators, and in addition will reduce the risk of error in these statements.

Ill health retirement (IHR)

A.60 Question 14 in the consultation document asked for views on the government's proposed treatment of cases involving IHR. A.61 The proposal set out in the consultation suggested that

members in scope who had already retired on ill health grounds would be able to retrospectively choose the benefits in the alternative scheme if they wished. However, whether their alternative choice of benefit would also be an IHR benefit would depend on whether they would be accepted for IHR pension in the alternative scheme. If such a member was refused retirement on ill health grounds in the alternative scheme, their choice would be between their existing ill health benefit and the other pension benefit that would have been awarded (at the age they retired) from the alternative scheme. This could be an actuarially reduced pension, or a deferred pension if the member is below their minimum pension age

Approach

- A.70 Members in receipt of IHR benefits will be treated in the same way as other members of the schemes and, consistent with the approach taken for other members already in receipt of pension benefits (including in relation to taper protection members), will have a choice as to which benefits they wish to receive for the relevant period. In practice, this will require schemes to consider whether the member would have been entitled to IHR benefits under the alternative scheme, which will 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 (the criteria for which may also vary, depending on the extent of ill health and its implications for a member's ability to undertake work in future). Where the requirements of the alternative scheme are satisfied, the scheme will provide the member with information about the alternative benefits available to them and the member may elect to receive those instead of the benefits already in payment. Where the member would not have satisfied the criteria for IHR benefits to be paid, the scheme will advise on the alternative benefits, if any, that would have been payable under the alternative scheme from the date their current benefits commenced and the member may elect to receive these instead of the benefits already in payment.
- A.71 The criteria for IHR pensions vary from workforce to workforce and between schemes, and schemes will provide further detail to relevant members when the DCU is in place.

Cases where a member has died since 1 April 2015

- A.72 The consultation sought comments on the government's proposed treatment of cases where members have died since 1 April 2015. This proposed treatment would mean that, where any increase in benefits was due, schemes would notify the individual who received any death lump sum payment (if that were a nominee, rather than the member's estate), survivors in receipt of ongoing pension payments, or a late member's legal personal representative (where no survivor pensions were in payment), and arrange to make the higher payment(s). These payments could relate to a pension the member was in receipt of before their death, to a death lump sum, or to any survivor pensions in payment.
- A.73 Alternatively, schemes could adopt a more complex approach and present survivors with the choice between two packages of benefits. This would be similar to the choice that the member would have been given had they still been alive; setting out the consequences of such a choice on payments already made to the member and/or their estate/survivors. The rationale behind offering such a choice stems from the fact that the reformed scheme may offer benefits not available in the legacy scheme, such as survivor pensions for unmarried partners.

Approach

- A.79 These cases will be reviewed as a priority by schemes. Taking into consideration views expressed by respondents on contact preferences, schemes will check whether a higher pension or lump sum amount would be available under the alternative scheme, and inform relevant family members where this is the case. The beneficiary will then have the option to request that the additional, alternative amount is paid.
- A.80 Any unauthorised payment charges or additional expenses incurred (where evidenced – e.g. from reopening a probate application) as a result of remedy would be reimbursed. This though

does not extend to inheritance tax payments which may become due or which may increase as a result.

- A.81 Where there are separate households containing family members who may be, or are already, entitled to survivor pensions, the choice between benefits will fall to the late member's surviving spouse or partner. The government will honour the commitment made in the consultation to protect child pensions already in payment, which would otherwise be impacted by a decision taken by someone outside the child's household. This is consistent with the approach set out in the consultation document.

Contingent decisions

- A.82 Question 16 in the consultation document asked for views on the government's proposed treatment of individuals who would have acted differently, in terms of decisions made about their scheme pension membership, had it not been for the discrimination identified by the Court of Appeal.
- A.83 The proposal in the consultation set out that where members wished to argue that they would have taken a different course of action had they known that continued membership of their legacy scheme during the remedy period was an option, then schemes would consider representations on a case-by-case basis. The consultation noted that unwinding some of these contingent decisions would involve complex calculations, would be likely to require evidence from the member and possibly also their employer, and tax adjustments may also need to be made.
- A.84 The consultation explained that where members wished to be treated as accruing benefits in their legacy scheme in relation to service in the remedy period, then payment of the correct employee and employer contributions would be required retrospectively, with appropriate interest. Tax adjustments may also need to be made.
- A.85 The consultation also explained that where a period of more than 5 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" (FSL) provided for by section 20 of the Public Service Pensions Act 2013. The FSL allows members in the reformed schemes with final salary legacy scheme service to have those benefits calculated in line with their final salary when they retire (or otherwise leave the reformed scheme), rather than when they left the legacy scheme. The consultation proposed that, where a member, and their employer, paid contributions owed for the relevant period then any FSL would be restored.

Approach

- A.96 Respondents tended to agree with the position set out in the consultation document, that contingent decision cases would be given the appropriate consideration when made at scheme level. The government notes that some member representatives considered that there should be automatic reconsideration of some cases; however, government takes the view that it will not be possible for schemes to know whether members took a decision, for example to opt out of scheme membership, as a consequence of the discrimination that arose. Members will need to show that they took an action, relating to their membership of a public service pension scheme, that would have been different had it not been for the discrimination identified by the courts. The government considers that any claim will therefore need to be raised by members.
- A.97 The government notes that some responses from member representatives and employers considered that there would be a need for central guidance to ensure consistent treatment across and within schemes. The government accepts the need for consistency in the approach and agrees that guidance would be beneficial around member decisions to opt-out of membership of the schemes due to the discrimination identified by the courts. The government will undertake further work with schemes to agree guidance on handling cases where members can show they have taken such contingent decisions about their scheme membership.

- A.98 The government recognises that schemes may need to consider cases that are not envisaged in the guidance and may have unique or uncommon aspects. Whilst the guidance will be kept under review, schemes will also need discretion to consider such cases on their merits and on a case by case basis.

Public sector transfers

- A.99 Question 17 asked ‘If the DCU is taken forward, should the deferred choice be brought forward to the date of transfer for Club transfers?’. The response to this was mixed.

Approach

- A.106 The government notes concerns raised about fairness if members are required to take decisions at the point transfers are made. The government has confirmed that the DCU will be implemented and agrees that a consistent approach is appropriate in respect of Club transfers. Members undertaking Club transfers will 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 will relate to all service in respect of the period from 1 April 2015 to 31 March 2022, whether that arises from service in employment in the receiving scheme or service arising from a Club transfer. The details of how club transfers will operate will be set out in updates to the Club transfer rules and scheme regulations.

Divorce cases

- A.107 Question 19 asked for views on the government’s proposed treatment of divorce cases. The consultation set out that a deferred choice would be exercised by the scheme member (pension debit member), not the ex-spouse or civil partner (pension credit member), on the basis that the scheme member has been subjected to the discrimination so far identified by the Court of Appeal. The pension credit member will be awarded the percentage (as specified by the courts) of the higher cash equivalent transfer value (CETV) due under remedy; this will not be changed to reflect any choice the scheme member (here the pension debit member) makes, which would result in a lower pension amount.

Approach

- A.112 The government confirms the consultation position, taking into consideration the support for this approach from respondents. The CETV will 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, so the transfer value will be based on whichever scheme, legacy or reformed, produces the higher amount in relation to any period of service during the period between 1 April 2015 and 31 March 2022. Where the CETV provided to the court would have been higher as a result of the implementation of the DCU, the pension credit member’s benefits will be increased in proportion with the increase in CETV to reflect that additional amount. The changes will come into effect when the DCU is implemented in scheme regulations.

Abatement

- A.113 Question 23 asked for views on the government’s proposed treatment of abatement. Abatement is the reduction or suspension of a pension in payment in the event of re-employment. Where abatement applies, and the post-retirement pension plus relevant earnings on re-employment exceed pre-retirement salary, any excess will usually be deducted (abated) from the pension in payment.
- A.114 The proposed approach set out in the consultation stated that where the DCU resulted in a retrospective increase to a pension, which might mean that a pensioner’s income from pension plus their earnings exceeded their pre-retirement earnings for the first time or by a greater amount, then abatement would not apply or would not be increased retrospectively.

A.115 Where abatement applies in the legacy scheme, and a pension award already taken had been abated, but the member chose to move to the reformed scheme for the remedy period, the consultation proposed that the abatement calculation would need to be reviewed and adjusted as necessary from 1 April 2015 or the date the pension was awarded, if later. In some other cases, a reduction in legacy scheme pension (because service during the remedy period was instead treated as earned under the reformed scheme) might mean that a remaining legacy benefit entitlement was no longer abated. Benefits earned in reformed schemes are not subject to abatement.

Approach

A.120 The government has noted the potential for inconsistent treatment in the position that was set out in the consultation, specifically that those who are older and had protection (either full or tapered) will potentially have been abated throughout. Someone who is not protected may choose legacy scheme benefits but have any excess that would have been abated ignored.

A.121 The government will continue to work with schemes to consider this further, given the complexity of the issues involved. Any necessary changes to scheme regulations will be consulted on alongside changes to implement the DCU.