

Portfolio Holder Decisions/Leader Decisions

Date: Monday, 28 September 2020
Time: 12.00 pm
Venue: Microsoft Teams

Membership

Councillor Peter Butlin
Councillor Kam Kaur

Items on the agenda: -

1. **Response to Government Consultation on the McCloud Remedy for the Local Government Pension Scheme** 3 - 80
2. **Response to Government Consultation on the McCloud remedy and its impact on the Fire Fighters' Pension Scheme** 81 - 170

Monica Fogarty
Chief Executive
Warwickshire County Council
Shire Hall, Warwick

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Portfolio Holder Decision – Response to Government Consultation on the McCloud Remedy for the Local Government Pension Scheme

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|-------------------------|--------------------------------------------------|
| Portfolio Holder | Portfolio Holder for Finance and Property |
| Date of decision | 28 September 2020 |
| | Signed |

Decision taken

Portfolio Holder approves the draft response (Appendix 1) to the MHCLG consultation (Appendix 2) in respect of the proposed remedy for the McCloud on the proposed amendments to the Local Government Pension Scheme.

Reasons for decisions

The proposed response is supportive of the remedy in so far as it would serve its intended purpose of eliminating the identified discrimination. The proposed response flags that there would be additional costs as a result of protections benefiting a larger group of members, and significant additional administrative complexity.

The proposed response is the same from the perspective of both Warwickshire County Council as an individual employer and as the Adminstrating Authority of the Warwickshire Pension Fund, and it is proposed to submit the response from both entities.

Background information

The Government introduced reforms to public sector pension schemes in 2014 and 2015 in a way that has been found by to be age discriminatory and unlawful. The Government is required to implement a remedy to remove the discrimination caused.

In summary the move from the final salary scheme to the career average scheme included a protection for all members who were within 10 years of retirement in 2012. This discriminated against (younger) members who were over 10 years from retirement.

The original protection was provided to members in service on 31 March 2012 and who were within ten years of normal pension age (NPA). It was therefore proposed that the protection is also provided to those in service on 31 March 2012 who have membership in the 2014 CARE scheme and who are not within ten years of retirement.

A consultation on a proposed remedy has been issued with a deadline for responses of the 8th October.

The draft response was shared with the Staff and Pensions Committee for comment.

Financial implications

The additional pension benefits cost of the remedy will ultimately be funded by those employers who have staff who benefit, however the impact will on average be relatively small compared to overall liabilities (a fraction of a percent) and would be reflected in employer contributions spread over many years.

There will also be an administration cost and the remedy adds significant complexity to the scheme and requires the use of additional data that needs to be collected and validated. These costs will be borne by the pension fund which is ultimately funded by a combination of employer and employee contributions and investment returns.

Environmental implications

None

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| Assistant Director | Finance |
| Lead Director | Strategic Director for Resources |
| Lead Member | Portfolio Holder for Finance and Property |

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| Urgent matter? | No |
| Confidential or exempt? | No |
| Is the decision contrary to the budget and policy framework? | No |

| List of background papers |
|---------------------------|
| None |

| Members and officers consulted and informed |
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| Portfolio Holder – Councillor Butlin Corporate Board – Rob Powell Legal – Jane Pollard Finance – Andrew Felton Equality – Keira Rounsley Democratic Services – Councillors – Local Member(s): |

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MHCLG McCloud Consultation Questions

Warwickshire County Council and Warwickshire Pension Fund Response:

Question 1 – Do you agree with our proposal to remove the discrimination found in the McCloud and Sargeant cases by extending the underpin to younger scheme members

The underpin will be extended to 31 March 2022 for qualifying members or their underpin date if earlier.

Warwickshire County Council (WCC) and Warwickshire Pension Fund (WPF) support the proposal to extend the underpin to younger scheme members as detailed in the consultation document.

Question 2 – Do you agree that the underpin period should end in March 2022?

This is consistent with the original government commitment that members within 10 years of retirement from 1 April 2012 should be protected.

Question 3 – Do you agree that the revised regulations should apply retrospectively to 1st April 2014?

For consistency the regulations should be retrospective.

Question 4 – Do the draft regulations implement the revised underpin which we describe in this paper?

Yes.

Question 5 – Do the draft regulations provide for a framework of protection which would work effectively for members, employers and administrators?

The regulations would work but will cause a significant and complex administrative burden that administrators and employers will need to meet.

Question 6 – Do you have other comments on technical matters related to the draft regulations?

No.

Question 7 – Do you agree that members should not need to have an immediate entitlement to a pension at the date they leave the scheme for underpin protection to apply?

Yes.

Question 8 – Are there any other comments regarding the proposed underpin qualifying criteria you would like to make?

No.

Question 9 – Do you agree that members should meet the underpin qualifying criteria in a single scheme membership for underpin protection to apply?

Yes.

Question 10 – Do you agree with our proposal that certain active and deferred members should have an additional 12 month period to decide to aggregate previous LGPS benefits as a consequence of the proposed changes?

Yes. To not extend this may leave the Scheme open to further challenge. Consideration should be given to allowing administering authorities the discretion to extend the period further where through no fault of the member it is not possible to inform and make a decision.

Question 11 – Do you consider that the proposals outlined in paragraphs 50 to 52 would have ‘significant adverse effects’ in relation to the pension payable to or in respect of affected members, as described in section 23 of the Public Service Pensions Act 2013?

Where a member’s salary experience in the CARE scheme turns out such that a final salary treatment would have been better than the career average treatment a member could be losing out.

Question 12 – Do you have any comments on the proposed amendments described in paragraphs 56 to 59?

The Fund welcomes these amendments which address anomalies in the current 2014 regulations, however they will cause a significant administrative burden.

Question 13 – Do you agree with the two-stage underpin process proposed?

Yes, this enables (where applicable) the early retirement factors to be taken into consideration when the member crystallises their benefits.

Question 14 – Do you have any comments regarding the proposed approaches outlined above?

No.

Question 15 – Do you consider there to be any notable omissions in our proposals on the changes to the underpin?

No.

Question 16 – Do you agree that annual benefit statements should include information about a qualifying member’s underpin protection?

Yes.

Question 17 – Do you have any comments regarding how the underpin should be presented on annual benefit statements?

The Fund will rely on guidance from the LGA Communication Group and the Scheme Advisory Board, but would expect the presentation to be understandable to a lay person.

Question 18 – Do you have any comments on the potential issue identified in paragraph 110?

It is appropriate to apply the annual allowance test at the underpin crystallisation date, this is the date where the member realises the pension growth.

Question 19 – Do the proposals contained in this consultation adequately address the discrimination found in the ‘McCloud’ and ‘Sargeant’ cases?

Yes.

Question 20 – Do you agree with our equalities impact assessment?

Yes.

Question 21 - Are you aware of additional data sets that would help assess the potential impacts of the proposed changes on the LGPS membership, in particular for the protected characteristics not covered by the GAD analysis (age and sex)?

No.

Question 22 – Are there other comments or observations on equalities impacts you would wish to make?

No.

Question 23 – What principles should be adopted to help members and employers understand the implications of the proposals outlined in this paper?

Clear and consistent communications for members and employers are essential, using plain English, being set out in a way that is understandable to a lay person, and being available in ways accessible to all.

Question 24 – Do you have any comments to make on the administrative impacts of the proposals outlined in this paper?

There will be a significant impact on pension administrators and scheme employers. Dealing with retrospective cases will put a strain on resources in what is a limited market either for additional administrative staff or third party administrators.

Question 25 – What principles should be adopted in determining how to prioritise cases

It seems logical to deal with dependants and retirement cases as the first priority.

Question 26 – Are there material ways in which the proposals could be simplified to ease the impacts on employers, software systems and scheme administrators

No.

Question 27 – What issues should be covered in administrative guidance issued by the Scheme Advisory Board, in particular regarding the potential additional data requirements that would apply to employers?

Consideration should be given to assisting scheme employers who may not have access to historic information about their LGPS members. Also, how members of defunct employers can be assisted again where there is little or no chance of retrieving historic information.

Question 28 – On what matters should there be a consistent approach to implementation of the changes proposed?

A consistent unified approach should be taken by all funds in order to be fair to and consistent with members.

Question 29 – Do you have any comments regarding the potential costs of McCloud remedy, and steps that should be taken to prevent increased costs being passed to local taxpayers?

Where increased costs relate to an employing organisation that is funded to any extent by local tax payers preventing an impact on local taxpayers would require additional external funding to cover the cost. However, the additional cost of the remedy is relatively immaterial overall for the majority of employers and will be spread over many years where it does increase employer contributions.

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Ministry of Housing,
Communities &
Local Government

Local Government Pension Scheme (England and Wales)

Amendments to the statutory underpin



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July 2020

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Scope of the consultation

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| Topic of this consultation: | This consultation seeks views on changes to the Local Government Pension Scheme in England and Wales (LGPS). It outlines proposed changes to the LGPS statutory underpin protection to remove unlawful discrimination found by the Courts in relation to public service pension scheme ‘transitional protection’ arrangements. Specifically, we propose to remove the condition that required a member to have been within ten years of their normal pension age on 1st April 2012 to be eligible for underpin protection. In removing the discrimination, we are proposing a number of supplementary changes to ensure the revised underpin works effectively and consistently for all members. |
| Scope of this consultation: | MHCLG is consulting on changes to the regulations governing the Local Government Pension Scheme (LGPS). |
| Geographical scope: | These proposals relate to the LGPS in England and Wales only. Separate consultation exercises will be undertaken by the relevant devolved authorities relating to the issues addressed in this consultation as they affect the local government pension schemes in Scotland and in Northern Ireland. |
| Impact Assessment: | <p><u>Public Sector Equality Duty</u></p> <p>The Ministry of Housing, Communities and Local Government has analysed the proposals set out in this consultation document (MHCLG) to fulfil the requirements of the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010. This requires the Department to pay due regard to the need to:</p> <ol style="list-style-type: none"> 1) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act 2) advance equality of opportunity between people who share a protected characteristic and those who do not 3) foster good relations between people who share a protected characteristic and those who do not. <p>The proposals outlined here are intended to remove age discrimination, which had been found to be unlawful in the</p> |

firefighters' and judicial pension schemes, from the LGPS rules governing the underpin. We consider that the changes proposed will significantly reduce differential impacts in how the underpin applies based on a member's age, by removing the age-related qualifying criteria found to be unlawful by the Courts in the context of the firefighters' and judicial pension schemes.

Based on analysis undertaken by GAD on active membership data for the LGPS as at 31st March 2019, we anticipate that some differences in how the underpin would apply to members of different age groups would remain. These are set out separately below, along with our assessment of these differences.

1) Qualification for the underpin - GAD's analysis shows that older active members on 31st March 2019 would be more likely to qualify for the revised underpin than younger active members. This is principally because of our proposal that the 31st March 2012 qualifying date for underpin protection is retained. The proportion of members active in the scheme as at 31st March 2019 who had been members of the scheme on 31st March 2012 is lower for younger members, where experience shows they have a higher withdrawal rate from scheme membership. We consider that members joining the LGPS after 31st March 2012 do not need to be provided with underpin protection. Members who joined after this date will have joined the LGPS when either it had already transitioned to the career average structure (for post-1st April 2014 joiners), or when it was well publicised that the LGPS benefits were reforming.

2) Members who benefit from the underpin - GAD's analysis also shows that active members between the ages of 41 and 55 as at 31st March 2019 would be more likely to benefit from the revised underpin (i.e. where the calculated final salary benefit is higher than the calculated career average benefit) than their younger and older colleagues. This reflects previous experience and future expectation that:

- this group are more likely than their older colleagues to experience the pay progression that would make the final salary benefit higher over the underpin period and
- this group are more likely than their younger colleagues to remain in active membership until such time as they would receive the pay progression necessary for the underpin to result in an addition to their pension (e.g. through promotions and other pay increases).

These differential impacts reflect the workings of a final salary scheme, and demonstrate some of the effects that can arise under that design. The Government proposes to move all local

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| | <p>government pensions accrual to a career average basis, without underpin protection, from April 2022 to apply a fairer system to all future service.</p> <p>In relation to sex, we anticipate that, broadly, the proportion of men and women who would qualify for the revised underpin and benefit from that protection matches the profile of the scheme. This assessment is also based on analysis undertaken by GAD on active membership data for the LGPS as at 31st March 2019.</p> <p>Proportionally, GAD's assessment is that men would be marginally more likely to qualify for the revised underpin and to benefit to a greater extent from underpin protection than women. This reflects the fact that, in line with previous scheme experience, the average male LGPS member would be expected to have higher salary progression than the average woman and that women are generally expected to have higher voluntary withdrawal rates than men. Members with longer scheme membership and with higher salary progression would be more likely to receive an addition to their pension through the underpin (i.e. where the final salary benefit is higher).</p> <p>These small differential impacts also demonstrate some of the effects that can arise under a final salary design. The Government proposes to move all local government pensions accrual to a career average basis, without underpin protection, from April 2022 to apply a fairer system to all future service.</p> <p>Limited data specific to the LGPS in England and Wales is available in relation to other protected characteristics. However, we have considered wider data from the Labour Force Survey (Q1 2020) and the Annual Population Survey (2019) in considering these characteristics. We do not consider that the changes to underpin protection proposed in the consultation will result in any differential impact to individuals with the following protected characteristics: disability, ethnicity, religion or belief, gender reassignment, pregnancy and maternity, sexual orientation and marriage/civil partnership.</p> <p>Further information regarding the equalities impacts of our proposals is contained in paragraphs 111 to 127. In this consultation, we are seeking views from stakeholders on the equalities impacts of the changes proposed. These views will be considered in determining how to proceed following the consultation exercise.</p> <p>The potential equalities impacts of our proposals will be kept under review. A further equalities impact assessment will be</p> |
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| | <p>undertaken following the consultation at the appropriate juncture.</p> <p><u>Other impacts</u></p> <p>The proposals in this paper are estimated to cost LGPS employers £2.5bn in the coming decades, as protected members retire and begin to receive their benefits. This estimate is based on a number of assumptions regarding the demographics of the LGPS in the years to come. Predicting whether the underpin becomes valuable in the future depends heavily on assumptions on long-term future pay growth trends. The £2.5bn estimate is based on an annual future long-term pay growth assumption of CPI+2.2%, which is the assumption used by GAD for the 2016 valuations of public service pension schemes. If annual future pay growth is less than this, the ultimate costs will be lower (and vice versa).</p> <p>As the LGPS is a funded scheme, employer contribution rates are set through local fund valuations and take into account a number of factors. As a result of this, it is not possible to say precisely how the proposals may impact on any individual employer's contribution rate.</p> <p>None of the changes contained in this consultation require a Regulatory Impact Assessment under the Small Business, Enterprise and Employment Act 2015.</p> |
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Basic Information

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| To: | <p>This consultation outlines details of proposed changes to the benefits of the LGPS and is particularly aimed at LGPS administering authorities, scheme members, scheme employers and their representatives.</p> <p>Any change to the LGPS is likely to be of interest to other stakeholders as well, such as professional advisers and local taxpayers. We welcome views on the proposals from all interested parties.</p> |
| Body/bodies responsible for the consultation: | Local Government Finance Stewardship, Ministry of Housing, Communities and Local Government |
| Duration: | This consultation will last for 12 weeks from 16/07/2020 to 08/10/2020 |
| Enquiries: | <p>For any enquiries about the consultation please contact:</p> <p>LGPensions@communities.gov.uk</p> |
| How to respond: | <p>Please respond by email to:</p> <p>LGPensions@communities.gov.uk</p> |

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| | <p>Alternatively, please send postal responses to:</p> <p>Local Government Finance Stewardship Ministry of Housing, Communities and Local Government 2nd floor, Fry Building 2 Marsham Street London SW1P 4DF</p> <p>When you are responding, please make it clear which questions you are responding to. Additionally, it would be very useful if you could confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:</p> <ul style="list-style-type: none">- your name,- your position (if applicable),- the name of your organisation (if applicable),- an address (including post-code),- an email address, and- a contact telephone number. |
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Introduction

1. This consultation contains proposals to amend the rules governing ‘transitional protection’ in the LGPS, following a successful legal challenge to transitional protection arrangements in the firefighters’ and judicial pension schemes.

2. In April 2014, a series of changes were made to the Local Government Pension Scheme in England & Wales (LGPS) to reform the scheme’s benefits structure. These changes were implemented as part of a wider project across Government to reform public service pensions and put them on a more sustainable, affordable and fairer footing for the longer term. In the LGPS, these changes included:

- moving benefit accrual from a final salary to a career average basis, and
- linking members’ normal pension age with their State Pension age (but at a minimum of 65).

3. Following negotiations with trade unions, transitional protection for members nearing retirement was implemented by the Government as part of the overall reform package and was designed to ensure that older workers had certainty and would not be any worse off as a result of the reforms made to the scheme. Transitional protection arrangements applied across public service pension schemes and in the LGPS were implemented through a statutory ‘underpin’.

4. Whilst all LGPS members joined the career average scheme in April 2014, members who met certain qualifying criteria (including that they had been within ten years of their final salary scheme normal pension age on 1st April 2012) gained statutory underpin protection. Underpin protection means additional checks are undertaken for protected members with the intent of ensuring that the career average pension payable under the reformed LGPS is at least as high as the member would have been due under the final salary scheme. Where it is not as high, scheme regulations provide that an addition must be applied to the member’s career average pension to make up the shortfall.

5. In the ‘McCloud’ and ‘Sargeant’ court cases (which related to the judicial and firefighters’ pension schemes respectively), the Court of Appeal found that the transitional protection arrangements in those schemes directly discriminated against younger members in those schemes and this could not be objectively justified. In July 2019, the Government confirmed its view that the ruling had implications for all the main public service pension schemes, including the LGPS, and that the discrimination would be addressed in all the relevant schemes, regardless of whether members had lodged a legal claim.

6. This consultation sets out how MHCLG propose to amend the statutory underpin to reflect the Courts’ findings in these cases. Primarily, we propose to remove the age requirements from the underpin qualification criteria. However, we are also proposing additional changes to ensure that the underpin works effectively and consistently for all qualifying members following the extension of the underpin to younger members. From April 2022, it is proposed that the period of underpin protection will cease and all active LGPS members will accrue benefits in the career average scheme, without a continuing final salary underpin.

7. Views from respondents are sought on questions 1 to 29 as well as on the draft regulations attached as annex B.

Background

Public service pension reform and transitional protection

8. In April 2014 and April 2015 the Government introduced reformed public service pension schemes. The changes followed a fundamental structural review by the Independent Public Service Pension Commission (IPSPC), chaired by Lord Hutton of Furness.

9. The Government commissioned the review because the cost of providing the schemes had increased significantly over the previous decades, with most of this increase falling to the taxpayer. At the same time, occupational pension provision in the private sector had changed significantly; employers were increasingly moving away from offering defined benefit pension schemes¹.

10. In their final report², the IPSPC set out a framework for comprehensive reform of public service pensions that sought to balance concerns about the cost of the schemes to taxpayers and the need to ensure decent levels of retirement income for those who have devoted their working lives in the service of the public.

11. The Government accepted Lord Hutton's recommendations as the basis for consultation with scheme employers, trade unions and other interested parties. During negotiations the Government agreed to protect those public service workers who, as of 1 April 2012, had ten years or less to their normal pension age (NPA)³, as they had least time to prepare.

12. The reforms were implemented in the LGPS in England and Wales from 1st April 2014, and in the other main public service pension schemes from 1st April 2015. The main features of the reformed schemes include later retirement ages to reflect the fact people have been living longer, higher employee contributions to rebalance the costs of the schemes between the members and taxpayers, and pensions based on average earnings rather than on pay at the point members retire or otherwise leave the schemes.

13. The schemes were designed to ensure that members would have good pensions, which at least met the target levels identified by Lord Turner's Pension Commission on the levels of income needed in retirement. The reformed schemes should provide many low and middle earners working a full career with pension benefits at least as good as, if not better than, the benefits they would have received under the previous arrangements.

14. The reformed schemes remain among the most generous available in the UK, and an important part of the remuneration of public service workers. Public service pension

¹ Chart Ex. 1, p8 of IPSPC interim report, October 2010, https://www.ucu.org.uk/media/4328/Independent-Public-Service-Pensions-Commission---interim-report-7-Oct-10/pdf/hutton_pensionsinterim_071010.pdf

² <https://www.gov.uk/government/publications/independent-public-service-pensions-commission-final-report-by-lord-hutton>

³ In the 2008 Scheme, a member's normal pension age was known as their normal retirement age. However, for consistency, in this consultation document we refer to it as their normal pension age or their NPA.

provision compares favourably with pension provision in the private sector. In 2019 34% of all employees with workplace pensions in the public sector received contributions of at least 20% from their employer. This compares with just 3% of all employees with workplace pensions in the private sector who received at least 20% from their employer⁴.

Reform in the LGPS

15. In the LGPS, the final salary scheme that existed prior to these reforms was known as **‘the 2008 Scheme’**. The reform package implemented from April 2014 (**‘the 2014 Scheme’**) through the Local Government Pension Scheme Regulations 2013⁵ (**‘the 2013 Regulations’**) consisted of the following main elements:

- fundamentally, and consistent with the approach taken across the public sector, a move to future benefit accrual based on a member’s pay over their career (a ‘career average’ structure), from a structure where member’s benefits were based on a member’s pay at leaving the scheme (a ‘final salary’ structure). Importantly, where active members had membership of the LGPS prior to April 2014 and did not have a disqualifying break in service⁶, but had aggregated their membership, they retained a ‘final salary link’ that meant their pay at point of leaving the scheme would still be used in calculating their 2008 Scheme benefits, even where this is after April 2014.
- a move from a NPA of 65 to a NPA linked to a member’s State Pension age, subject to a minimum of 65 (currently ranging from 65 to 68), but with members still able to retire as early as 55 or as late as 75, with actuarial reductions or increases applied, respectively.
- a move from a 1/60th accrual rate to a 1/49th accrual rate. A pension scheme’s accrual rate is the proportion of a member’s pay that they receive for each year of membership. The change in the LGPS accrual rate in the 2014 Scheme was a 22% improvement from that which applied in the 2008 Scheme.
- revisions to employee contribution bandings. From April 2014, employees’ contributions to the LGPS were banded from 5.5% of earnings (for members earning less than £13,500 per year) up to 12.5% of earnings (for members earning over £150,000 per year). Contribution rates had also been banded in the 2008 Scheme, but the range had been narrower, from 5.5% to 7.5% of earnings.
- the introduction of a 50/50 section, giving scheme members the flexibility to pay half the contributions for half the pension accrual for a period of time, whilst still retaining full life cover and ill-health cover.

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<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/workplacepensions/bulletins/annualsurveyofhoursandearningspensiontables/2019provisionaland2018finalresults#contributions-to-workplace-pensions>

⁵ <http://www.legislation.gov.uk/ukxi/2013/2356/contents>, as amended

⁶ Where referred to in this document, a ‘disqualifying break in service’ is a continuous break of more than five years in active membership of a public service pension scheme.

16. As a whole, the package was designed to achieve the Government's aims in making the LGPS more sustainable, affordable and fairer in the longer term. In particular, the combination of the move to a career average basis and the improvement to the LGPS's accrual rate should mean that many low and medium paid members will receive a pension from the 2014 Scheme at least as good as the pension they would have received from the 2008 Scheme. In addition, whilst LGPS employer contributions vary, members will benefit from significantly higher employer contributions than the average applicable in the private sector.

The statutory underpin

17. The LGPS provided transitional protection to its older workers via a statutory underpin (hereafter referred to as 'the underpin'). All members moved into the 2014 Scheme on the reform date of 1st April 2014, but 'protected members' (being the older group of members who met certain qualifying criteria and originally had underpin protection) were given an underpin that provides their retirement pension cannot be less than it would have been in the 2008 Scheme. In some public service pension schemes, tapered protections were provided to members who were between 10 and 14 years from their NPA on 1st April 2012, and so were not eligible for full protection (which was reserved for those within ten years of their NPA on 1st April 2012). However, in the LGPS, there were no tapered protections.

18. Underpin protection differs from the approach used in other main public service pension schemes⁷ where older workers who met the criteria for transitional protection stayed in their final salary schemes after separate, new career average schemes were introduced in April 2015. In those schemes, different rules may therefore apply to protected and unprotected members in relation to areas of scheme design including contribution rates, survivor benefits and ill health retirement.

19. By contrast, the existing underpin only has application in relation to the value of a protected member's pension at their 'underpin date' (see paragraph 20 for further details). All members have participated in the reformed career average scheme from April 2014 and the same rules in relation to contributions and benefits apply to all members in the same way.

20. Underpin protection in the LGPS was implemented through regulation 4 of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendments) Regulations 2014⁸ ('**the 2014 Regulations**'). At a high level, underpin protection under regulation 4 works in the following way:

- Underpin protection is granted to those who were active members in the LGPS on 31st March 2012 and who on 1st April 2012 were 10 years or less from the NPA

⁷ With the exception of the local government pension schemes in Scotland and Northern Ireland who took a similar approach to the LGPS in England and Wales.

⁸ <http://www.legislation.gov.uk/uksi/2014/525/contents/made>, as amended

applicable to the member under the 2008 Scheme (usually 65⁹)¹⁰ (regulation 4(1)(a)).

- Those who meet the basic criteria for underpin protection retain this so long as they are:
 - in active membership in the 2014 Scheme the day before their ‘underpin date’ (see below),
 - do not have a disqualifying break in service after 31st March 2012, and
 - have not drawn benefits from the 2014 Scheme before their underpin date (regulation 4(1)(b) to (d) and (3)).
- The underpin test is carried out on an individual’s ‘underpin date’ which is the earlier of:
 - the date the protected member reaches their NPA under the 2008 Scheme (usually 65), or
 - the date the protected member ceased to be an active member of the scheme with an immediate entitlement to a benefit (regulation 4(2)).
- The underpin test is carried out by comparing the ‘assumed benefits’ (i.e. the career average benefits the protected member has accrued) against the ‘underpin amount’ (i.e. the final salary benefits the protected member would have accrued if the scheme had not been reformed) (regulations 4(5) and (6)). These paragraphs contain detailed provisions which enable administrators to take into account a variety of factors in the comparison of benefits. For example, where the protected member is due to receive an enhancement to their 2014 Scheme benefits as a result of retiring on ill-health grounds, the difference between that enhancement and the enhancement they would have received under the 2008 Scheme would be considered.
- If the underpin amount is calculated to be higher than the assumed benefits on the underpin date, the protected member’s pension account is to be increased by the difference (regulation 4(4)).

The McCloud and Sargeant cases

21. Soon after the reformed scheme benefit structures were introduced in other public service pension schemes in April 2015, legal challenges were brought against the transitional protection arrangements in the judicial and firefighters’ pension schemes (‘McCloud’ and ‘Sargeant’, respectively) on various grounds including that the transitional protections offered to older members constituted unjustified direct age discrimination. In those cases, younger firefighters and judges argued that younger members were treated less favourably than older members who were given transitional protection. The Court of

⁹ By virtue of regulation 24(4) of the 2014 Regulations, some groups had a protected 2008 Scheme NPA of 60 in relation to their 2008 Scheme benefits.

¹⁰ By virtue of regulation 9(1) of the 2014 Regulations, members who were not active in the LGPS on 31st March 2012, but who were active in another public service pension scheme on that date and who meet certain qualifying criteria may also have underpin protection

Appeal ruled in December 2018¹¹ that transitional protection in the judicial and firefighters' pension schemes gave rise to unlawful age discrimination.

22. The Government sought permission to appeal to the Supreme Court. This application was refused on 27 June 2019. In a written ministerial statement on 15 July 2019¹², the Government explained that it accepted that the Court of Appeal's judgment had implications for all schemes established under the Public Service Pensions Act 2013, as all schemes had provided transitional protection arrangements for older members. The Government confirmed that it would take steps to address the difference in treatment across all schemes and for all members with relevant service, regardless of whether they had lodged a claim. The matter has been remitted to the Employment Tribunals to determine a remedy for claimants¹³. Since summer 2019, MHCLG have been considering the changes necessary to remove the unlawful discrimination from LGPS regulations, and in February 2020 held technical discussions with the Scheme Advisory Board on these proposals.

¹¹ <https://www.judiciary.uk/wp-content/uploads/2018/12/lord-chancellor-v-mcloud-and-ors-judgment.pdf>

¹² <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-07-15/HCLS1725/>

¹³ The LGPS in England and Wales does not have any ongoing court cases relating to its underpin protection.

Addressing the discrimination

Our approach

23. In the McCloud and Sargeant cases, the Courts identified unjustified age discrimination in transitional protection arrangements in the Judicial and Firefighters' Pension Schemes. In relation to the LGPS, this difference in treatment exists between two groups of LGPS members:

- those who were in service on 31st March 2012 and were within ten years of NPA on 1st April 2012, therefore benefiting from underpin protection and 'better off' than the second group; and,
- those who were in service on 31st March 2012 and were more than ten years from NPA, were not eligible for underpin protection and therefore 'worse off' than the protected members (as they were not guaranteed a pension of at least the level they would have received in the final salary scheme).

24. At a high-level, our proposal for removing the difference in treatment from the LGPS is to extend underpin protection to the second group of members listed above – i.e. those who were not old enough to receive underpin protection when it was originally introduced. This should ensure that the two groups listed are treated equally for benefits accrued from April 2014 onwards. This proposal is described in more detail in the next section ('Detailed proposals'). The updated underpin is referred to here as 'the revised underpin'. The members who would be in scope of the revised underpin, both the group originally protected and those who would newly gain underpin protection under our proposals, are collectively referred to as 'qualifying members' in this document.

25. Consultees may be aware that Government has separately recently launched a consultation¹⁴ seeking views on this matter as it applies to most of the other main public service pension schemes¹⁵. As noted already, transitional protection arrangements were different in other public service pension schemes and therefore different issues arise in considering an appropriate remedy for the discrimination found in McCloud and Sargeant. That other Government consultation seeks views on two options for removing the discrimination in those schemes, both involving an element of member choice between the reformed career average schemes and the legacy final salary schemes.

26. Member choice is being considered in relation to other public service pension schemes because, in those schemes, the two groups of members have participated in different pension schemes since April 2015 with different benefits between reformed and legacy schemes and, potentially, different employee contribution rates. This is not the case in the LGPS because underpin protection is designed to ensure that a qualifying member is better off without needing to make a choice.

¹⁴ <https://www.gov.uk/government/consultations/public-service-pension-schemes-consultation-changes-to-the-transitional-arrangements-to-the-2015-schemes>

¹⁵ The LGPS is out of scope for the other Government consultation.

27. As set out in paragraphs 17 to 20, the underpin is principally an administrative test undertaken at the earlier of the date a qualifying member leaves active service and the date they reach their 2008 Scheme normal pension age. It is designed to guarantee that a qualifying member's pension calculation gives them the better of a) the pension they have built up in the career average 2014 Scheme and b) the pension they would have built up in the final salary 2008 Scheme, over the same time period.

Question 1 – Do you agree with our proposal to remove the discrimination found in the McCloud and Sargeant cases by extending the underpin to younger scheme members?

28. To achieve the full benefits of the career average reforms made in April 2014, it is the Government's view that the underpin period should end for all qualifying members at a specified point in time.

29. Under the rules governing the existing underpin, no further underpin dates will arise beyond 31st March 2022, as this is the last date a protected member can reach their 2008 Scheme NPA. In considering how to equalise treatment between the unprotected and protected groups, we propose that both groups will be given underpin protection from 1st April 2014 to 31st March 2022 (or to the members' underpin date, where this is earlier). We consider that this approach will mean there is a consistent period of protection for all qualifying members – i.e. those who were members of the scheme on 31st March 2012 and who went on to have 2014 Scheme membership without a disqualifying break in service (and who aggregated their membership), regardless of their age.

30. From 1st April 2022 it is our intention that all service in the LGPS will be on a career average basis, with no underpin. As set out in the Background section, we believe that the move from a final salary to a career average pension scheme design in April 2014 created a fairer structure for LGPS members. Under the 2014 Scheme, those public servants who see considerable increases in earnings over their career – and particularly towards the end of their career – are no longer likely to be relatively favoured compared with their colleagues who did not. Phasing out underpin protection is an important step to achieving the full benefits of a career average scheme design.

Question 2 – Do you agree that the underpin period should end in March 2022?

31. We are keen to ensure that the group of younger members who, under our proposals, would gain underpin protection have an equivalent level of protection to their older colleagues. It is therefore proposed that the underpin comparison would not, for most qualifying members, take place upon the underpin period ending in March 2022. Instead, the comparison of 2008 Scheme and 2014 Scheme benefits would take place at a qualifying member's underpin date (generally, the earlier of the member's date of leaving and age 65), even if this is after March 2022 – i.e. qualifying members will retain an ongoing 'final salary link', consistent with their pre-2014 pension accrual. For those who are currently at an earlier stage of their career, and who may have promotions and other salary increases later in their career, this ensures a fairer comparison of the two schemes' benefits. The final pay calculation would be based on a member's pay over their last 365

days of active membership, and would take into account the existing 'lookback' provisions where members have had a reduction in pay¹⁶.

32. As part of this project we have considered how the existing underpin regulations work and the following section contains details of changes we are proposing. Collectively, the changes mean that the revised underpin regulations will differ in a number of respects from the existing underpin provisions contained in regulation 4 of the 2014 Regulations. We consider that these amendments are essential to ensure that the underpin regulations are clear and consistent and provide a framework of protection that works more effectively for all stakeholders and which, at the same time, provides in essence the same level of protection to scheme members.

33. Nonetheless, to avoid creating new differences in treatment in the LGPS, we propose that the amended regulations will apply retrospectively from 1st April 2014, ensuring that all qualifying members are subject to the same detailed provisions. We believe this is the best approach and one which will allow us to be confident we are addressing the findings of the Courts, and removing differences in treatment between older and younger workers. We do not plan that members' accrued rights would be detrimentally affected as a result of this approach, but we welcome comments from stakeholders if there are specific concerns about potential accrued rights issues.

34. In proposing these changes, we have considered the legal principle of 'minimum interference'. The courts have found this principle generally applies to pensions changes following an equal pay issue. Whilst it has not been recognised outside the context of equal pay, it could be considered in other contexts too. 'Minimum interference' means that the scheme is obliged to make the minimum necessary interference to ensure the scheme operates lawfully. Whilst some of the changes outlined in this consultation paper are not a direct consequence of the Courts' findings in the McCloud and Sargeant cases, we believe that they are necessary for the effective and consistent application of underpin protection to members of the LGPS.

35. Retrospective application of the proposed regulations means that certain cases will need to be revisited by scheme administrators. Below are examples of such cases:

- Cases where a member had underpin protection originally and the revised underpin may have applied differently to them. In practice, this may be all cases where a member already has underpin protection and has since had their underpin date.
- Cases where a member does not currently have underpin protection, but would have under the revised underpin, and has since retired or left the LGPS with a deferred benefit.
- Cases where a member does not currently have underpin protection, but would have under the revised underpin, and has since transferred out of the LGPS or trivially commuted their benefits.

36. There will also be more difficult cases, for example, where members who may have benefitted from the proposals outlined in this consultation have died. In such cases, it is

¹⁶ Under the 2008 Scheme, members with pay reductions or restrictions in their last ten years of continuous employment may have the option to have their final pay calculated as the average of any 3 consecutive years' pay in their last 13 years.

our view that administrators should take all steps to ensure that any retrospective increase in a member's pension arising from the underpin is taken into account in respect of relevant survivor benefits that became payable at the time of the member's death.

37. We are aware that retrospective application of the proposed draft regulations will lead to significant administrative complexity. We do not anticipate any recalculations would result in members' benefits being detrimentally affected. Further consideration of the complexities arising from retrospection are considered in the Implementation and Impacts section.

Question 3 – Do you agree that the revised regulations should apply retrospectively to 1st April 2014?

38. This consultation sets out proposals which are principally about removing unlawful discrimination from the LGPS. Achieving this key aim, and minimising the risk of further issues arising, has therefore been our primary concern in coming forward with these proposals. However, in doing so, we have been conscious of the additional administrative burden these changes would create and have sought to minimise the impacts wherever possible. We consider that the proposed approach is the simplest way we can effectively ensure that the revised underpin works effectively and fairly for all. Further consideration of the potential administrative impacts of the proposals is outlined in paragraphs 134 to 136.

Detailed proposals

39. This section contains our detailed proposals on the proposed amendments to the underpin. Draft regulations have been prepared (**annex B**) and we would welcome general comments on those draft regulations, as well as specific comments on the below questions.

Question 4 – Do the draft regulations implement the revised underpin which we describe in this paper?

Question 5 – Do the draft regulations provide for a framework of protection which would work effectively for members, employers and administrators?

Question 6 – Do you have other comments on technical matters related to the draft regulations?

The revised underpin – basic elements

40. The approach we have taken to the revised underpin consists of a number of basic elements, as described here.

Qualification criteria

41. Fundamentally, under the revised underpin, members would no longer need to have been within ten years of their 2008 Scheme NPA to qualify for underpin protection. Members who were active in the 2008 Scheme on 31st March 2012 and who have accrued benefits under the 2014 Scheme without a disqualifying break in service (five or more years) would have underpin protection, subject to aggregation requirements.

42. An aspect of the existing underpin regulations that we are seeking to change is the requirement that a member must leave active service with an immediate entitlement to a pension for underpin protection to apply to them (regulation 4(1)(b) of the 2014 Regulations). We anticipate that when underpin protection is extended to younger workers, it is much more likely that members will leave the scheme before having an immediate entitlement to benefits, meaning they would not, as things stand, benefit from underpin protection. Under the revised underpin, we propose that underpin protection would apply where a member leaves with either a deferred or an immediate entitlement to a pension. This approach is also more likely to ensure that LGPS regulations are compliant with preservation requirements under the Pension Schemes Act 1993, which broadly require¹⁷ that schemes do not contain rules which mean that leavers prior to normal pension age are treated less favourably than leavers at normal pension age. The retrospective application of this change would also aim to ensure that any members protected under the

¹⁷ Section 72 of the Pension Schemes Act 1993

existing underpin who have suffered detriment due to the current wording would regain their underpin protection¹⁸.

43. As per existing requirements, members who leave the LGPS without an immediate or deferred entitlement to a pension¹⁹ would not have underpin protection, as they would only be eligible for a refund of their contributions, aggregation with another LGPS record or a transfer to another scheme

Question 7 – Do you agree that members should not need to have an immediate entitlement to a pension at the date they leave the scheme for underpin protection to apply?

Question 8 – Are there any other comments regarding the proposed underpin qualifying criteria you would like to make?

Aggregation

44. In reviewing the operation of the existing underpin, it has become clear that the current regulations do not implement our policy intent as clearly as we would like in one important respect, and the existing regulations could cause substantial new issues to arise. Whilst the LGPS is one pension scheme, with rules defined at the national level through scheme regulations, it is a locally administered scheme, with 87 administering authorities throughout England and Wales. It is an important principle for the effective and efficient administration of the scheme that administrators are generally able to calculate pension benefits independently and do not need to obtain data from other LGPS administrators to be able to undertake basic pension calculations. Such an approach also ensures that the scheme is run in accordance with the principle of 'data minimisation', where personal data is not shared between data controllers any more than is necessary for the effective administration of a member's pension.

45. To prevent such complications, the LGPS has aggregation provisions which mean that separate pension records can be joined together²⁰. This means that, in most cases, members can choose whether to have LGPS records aggregated (or 'joined up') or kept separate from one another. Since 1st April 2014, aggregation is usually automatic²¹ - where a member leaves an employment with a deferred benefit and then rejoins the LGPS

¹⁸ For example, members who, under regulation 24(1) of the 2014 Regulations, had a protected NPA of 60 in the 2008 Scheme. Some of these protected members would have been younger than 55 in April 2014 and may not have had an immediate entitlement to benefits at their underpin date.

¹⁹ This applies where members do not have a qualifying service for a period of two years (regulation 3(7) of the 2013 Regulations). Special provisions apply where members joined before 1st April 2014.

²⁰ This does also require data sharing between administering authorities. However, the transfer of a record from one authority to another following a structured aggregation process is likely to be simpler and less prone to error than ad hoc sharing necessary to undertake pension calculations from time-to-time over a member's career.

²¹ Where a member only has a deferred refund entitlement (i.e. has left with a refund entitlement which has not yet been paid) from a ceased period of LGPS membership, this must be aggregated with their subsequent LGPS membership and there is no choice (regulation 22(5) and (6) of the 2013 Regulations).

in another employment (potentially in another pension fund), they have 12 months to elect to their administrator for aggregation not to apply²².

46. Where a member takes a decision which means their LGPS benefits are unaggregated, these are generally administered as separate entitlements. Where a member takes a decision which means their LGPS benefits are aggregated, their combined record is generally administered as one period of membership. For example, where a member with 2008 Scheme membership has not had a disqualifying break in service and aggregates that record with another LGPS membership, they would retain their final salary link on the combined record. By contrast, if the same member decides not to aggregate their membership they would lose their final salary link²³ on the unaggregated record. These rules preserve the approach described above, through which local administrators are generally able to calculate separate benefits independently.

47. However, regulation 4 of the 2014 Regulation does not appear to include an aggregation requirement for underpin protection to apply. A strict interpretation of regulation 4(1)(a) therefore appears to suggest that where, for example, a member was:

- a) active in the LGPS on 31st March 2012,
- b) subsequently active in the 2014 Scheme in a separate employment without a disqualifying break in service, and
- c) the two records were not aggregated,

underpin protection would still apply. In our view, this would be extremely difficult for scheme administrators to effectively administer in the coming decades. It is also inconsistent with the general approach MHCLG has adopted in relation to the administration of the LGPS, as described in paragraph 45, and as has been applied in relation to the final salary link.

48. Where there is no requirement to aggregate benefits, administrative difficulties would not only arise in determining who has underpin protection (as a previous record may be held in another fund), but also in actually undertaking the underpin comparison. One scenario that may be likely to occur more frequently, as a result of the significant expansion of the underpin proposed in this document, would be situations like the following:

- A member has two, unaggregated LGPS records in separate funds:
 - Membership one – active from 2011 to 2016, and
 - Membership two – active from 2017 to 2022.
- As the member was in active service on 31st March 2012 and had 2014 Scheme membership, without a disqualifying break in service, they have underpin protection.
- Upon leaving membership one, the member would have an underpin date (calculated in the normal way).

²² By virtue of regulation 22(8) of the 2013 Regulations.

²³ By virtue of regulation 3(8) of the 2014 Regulations.

- The member would also have an underpin date upon leaving membership two for their active membership in the scheme over the underpin period (for this member, 2014 to 2016 and 2017 to 2022). This would require the second fund to undertake an underpin comparison for the whole period using data they hold and data they need to obtain from the other fund (in relation to membership one).
- In this situation, it may also need to be considered whether any underpin addition arising should be split between the two funds and the two employers, so as to ensure liabilities are appropriately held.

49. This would clearly be extremely administratively complex and potentially lead to an increased likelihood of errors being made. It is likely that other similar scenarios would also arise, and that the administrative complexities would continue for many years (as some members' underpin date may not take place for 30 or 40 years).

50. In light of this, we are proposing that regulation 4 of the 2014 Regulations is amended to make clear that members must meet the qualifying criteria in a single membership (a 'relevant Scheme membership' as defined in the proposed regulations) for underpin protection to apply. So, where a member has had a break in service, or a period of concurrent employment, their benefits must be aggregated for underpin protection to apply. The introduction of the concept of 'relevant scheme membership' has allowed us to define more clearly in the regulations the benefits administrators should be assessing when undertaking underpin calculations.

51. As our intention is for the revised underpin regulations to apply retrospectively, it is possible these changes will mean that some members of the LGPS who have underpin protection at the moment (across separate LGPS memberships) would lose this. To ensure that no member is worse off as a result of our proposed amendments, we are proposing that active and deferred members are given an additional 12 months to elect to aggregate previous periods of LGPS membership, where such a decision would mean they have 'relevant Scheme membership' and therefore would have underpin protection. It is not proposed that this decision would be required for pensioner members, whose existing pensions would be unaffected by the aggregation changes outlined here. Circumstances where current pensioner members have underpin protection which is based on unaggregated membership and they have received an addition to their pension as a result of their underpin protection are expected to be rare²⁴.

52. The additional 12 months would apply from the date the regulations come into force. This additional election period would not apply in respect of other periods of membership members may wish to aggregate, only to periods where a failure to aggregate would mean the member would not obtain underpin protection²⁵. Good communications with members

²⁴ Such situations are expected to be rare due to a combination of factors. Generally, we expect that most protected LGPS members currently retiring are better off under the career average scheme, due in part to its substantially better accrual rate. Moreover, LGPS administrators are unlikely to be aware that a member has underpin protection if a member has not aggregated their previous LGPS membership. We expect that situations where a member has been awarded an underpin on unaggregated membership by their administrator and that subsequent underpin calculation has shown the final salary pension to be better than the member's career average pension would be rare.

²⁵ However, it should be noted that LGPS employers generally have the ability to allow aggregation beyond the statutory limits set out in scheme regulations.

in this situation will be crucial so that they understand whether this election period applies to them and the implications of the decision they are being asked to consider. As set out in paragraphs 131 and 133, we would plan to work closely with the Scheme Advisory Board on member communications to support the changes proposed in this paper.

53. The Public Service Pensions Act 2013 applies certain requirements where a responsible authority²⁶ proposes to make scheme regulations containing retrospective provisions which appear to the authority to have 'significant adverse effects in relation to the pension payable to or in respect of members of the scheme' (section 23(1))²⁷. Specifically, where this is the case, the following applies:

- The authority must obtain the consent of persons (or representatives of the persons) who appear to the responsible authority to be likely to be affected by the provisions (sections 23(1) and (3)).
- The authority must lay a report before Parliament (section 23(4)).
- The regulations become subject to the affirmative procedure, meaning they have to be approved by a resolution of each House of Parliament (sections 24(1)(b) and 38).

54. We welcome stakeholders' views on whether the changes we describe in paragraphs 50 to 52 would have 'significant adverse effects' in relation to the pension payable to or in respect of affected members. Whilst the changes would have retrospective application, the additional 12 month election period we are proposing would ensure that members have the opportunity to aggregate their pension records and obtain underpin protection if they wish. Members who wish to keep their records separate (perhaps as they have re-joined the LGPS in a lower paid post and do not want a final salary link) would also be able to retain this position by doing nothing.

Question 9 – Do you agree that members should meet the underpin qualifying criteria in a single scheme membership for underpin protection to apply?

Question 10 – Do you agree with our proposal that certain active and deferred members should have an additional 12 month period to decide to aggregate previous LGPS benefits as a consequence of the proposed changes?

Question 11 – Do you consider that the proposals outlined in paragraphs 50 to 52 would have 'significant adverse effects' in relation to the pension payable to or in respect of affected members, as described in section 23 of the Public Service Pensions Act 2013?

²⁶ Under section 2 and schedule 2 of the Public Service Pensions Act 2013, the Secretary of State is the responsible authority for the LGPS in England and Wales.

²⁷ Certain requirements also apply under section 23(2) of the Public Service Pensions Act 2013 where the responsible authority proposes to make scheme regulations that are retrospective in nature, but which have significant adverse effects in other ways (for example, in relation to injury or compensation benefits). We are content that these provisions would not apply in respect of these proposed changes.

Achieving a fair and consistent underpin

55. Alongside the changes necessary to remedy the discrimination found by the Courts, and the aggregation proposal above, we are also proposing some changes to underpin provisions to ensure that the underpin works effectively and consistently for all members.

56. **Breaks in service of less than five years** – the 2014 Regulations do not currently make clear whether it is permitted for the underpin to be re-calculated if a protected member leaves active service and returns without a disqualifying break in service (i.e. within five years). We propose that where a qualifying member leaves active service, rejoins within five years and aggregates their benefits, a further underpin comparison would be undertaken when they next reach their underpin date (i.e. leave active service or reach their 2008 Scheme NPA), using their final salary at the most recent date of leaving (and the results of the previous comparison disregarded). Taking this approach means that promotional pay increases that may apply where a qualifying member progresses in their career are taken into account in their underpin calculations. It also ensures younger members of the scheme have equivalent protection to their older colleagues (whose final salary benefit is based on their pay at the end of their career, after relevant promotions and pay rises). It may also benefit those qualifying members who are more likely to have a break in employment, such as women²⁸ or those who have a disability. However, it is proposed that qualifying members who re-join the LGPS after their 2008 Scheme NPA would not have a further underpin date, even if they aggregate their previous pension rights. This is consistent with our general approach that underpin protection only provides protection until a member's 2008 Scheme NPA.

57. **Early/late retirement factors** - When a protected member leaves the scheme, the current underpin calculation does not take into account the impact of early/late retirement factors, which may mean the calculation does not correctly identify the scheme in which the member would receive the higher benefits. This situation arises because of differences in NPAs in the 2008 and 2014 Schemes, which may mean early and late retirement factors apply at different rates. We therefore propose that the revised underpin should include a 'check' to ensure that, at the point a qualifying member takes their benefits from the scheme, they are still due to receive at least the pension they would have received under the 2008 Scheme, after the application of any early/late retirement factors. Further detail on how this will work is outlined in the next section regarding the two-stage process we intend to adopt.

58. **Death in service** – the existing definition of the underpin date set out in regulation 4(2) of the 2014 Regulation do not make clear what should happen where a member who has underpin protection dies in active service. On a strict interpretation, the 2014 Regulations would therefore appear to mean that there is no underpin comparison for such a member (which could reduce any survivor benefit that may be payable). We do not believe that was or should be the policy intent. In relation to the revised underpin, we therefore propose that there would be a clear requirement for an underpin comparison to be undertaken where a qualifying member dies in service.

59. **Survivor benefits** – it is not always clear how the survivor benefits provisions in the 2013 Regulations apply in relation to the underpin, and whether increases in benefits

²⁸ <http://www.parliament.uk/briefing-papers/sn06838.pdf>

arising from the underpin should be included in the calculation of survivor benefits following the death of a protected member (from any status). We intend that the amended regulations will make clearer how the underpin applies in relation to survivor benefits. In general terms, it is our policy that where a qualifying member has an addition to their pension arising from the underpin, this should be taken into account in determining the value of relevant survivor benefits, where such benefits are based on the value of the qualifying member's pension. The next section of this paper outlines our policy on the underpin and survivor benefits in more detail.

60. Together and individually, the changes we describe in paragraphs 56 to 59 are intended to be beneficial for scheme members, and are intended to ensure that the revised underpin works for all members with underpin protection in a consistent and effective way. As outlined in paragraph 34, we have considered the principle of minimum interference but believe that these changes are both appropriate and necessary.

Question 12 – Do you have any comments on the proposed amendments described in paragraphs 56 to 59?

A two-stage process

61. Under current provisions, the underpin calculation takes place at a single point in time – a member's underpin date, being the earlier of the date a member leaves active service with an immediate entitlement to a pension, and the date they reach their 2008 Scheme NPA. This has its advantages, such as in respect of administration. However, in the round, we now consider a two-stage underpin process would provide a more robust form of protection and the draft regulations attached propose such an approach. Under this, all qualifying members would have an 'underpin date' and an 'underpin crystallisation date':

- the purpose of the underpin date would be to provide for a provisional assessment of the underpin, broadly comparing the qualifying member's 2014 Scheme benefits in a relevant scheme membership against the 2008 Scheme benefits they would have accrued over the same period, in respect of the same membership. The underpin date would take place at the earliest of the date the qualifying member:
 - leaves active service in a relevant scheme membership,
 - reaches their 2008 Scheme NPA, or
 - dies.

Regardless of the outcome of this provisional comparison, there would be no adjustment to a member's pension at their underpin date. The purpose of the comparison at a member's underpin date would primarily be so that the member has early information on how the underpin may apply to them. This recognises that there may be many years between a qualifying member's underpin date and their underpin crystallisation date, when the final comparison is due to take place.

- The purpose of the underpin crystallisation date would be to provide for a final check at the point the qualifying member's benefits from the scheme are 'crystallised' (where the member takes their pension from the scheme). The check would be designed to ensure that qualifying members always receive at least the

higher of the pension they would have been due from the 2014 Scheme and the 2008 Scheme, taking into account the impact of factors like early/ late retirement adjustments.

62. We consider that the use of a two-stage process will achieve the following:

- Fundamentally, it should give qualifying members greater confidence that the underpin process has given them the benefit that is better for their own personal situation, even if they take their benefits many years after they leave the scheme.
- By undertaking an initial comparison at a member's underpin date, it would give qualifying members information about how the underpin may apply to them at the earliest possible date, even if such calculations would only be provisional.
- It is more compatible with the revised underpin where members can re-join, aggregate their membership and have a further underpin date at a subsequent point in time. Until the final underpin check at a member's underpin crystallisation date, there will be no change to a member's active or deferred pension arising from the underpin.
- It reflects the fact that for most members retiring on age grounds, early and/or late retirement factors will apply in calculating their 2008 and/or 2014 Scheme benefits. As these will not apply in the same way to a member's 2008 and 2014 Scheme entitlements (unless their 2008 Scheme NPA is the same as their State Pension age), a final check at the point benefits are paid is necessary to ensure the member is getting the higher benefit.

63. Further detail on the proposed two-stage process is contained in **annex C** and illustrative examples of a variety of scenarios are included in **annex D**.

Question 13 – Do you agree with the two-stage underpin process proposed?

Underpin period and final salary link

64. As discussed earlier in the consultation (paragraphs 28 to 31), we propose that:

- the revised underpin be extended to provide underpin protection to all qualifying members for service from 1st April 2014 up to and including 31st March 2022, except where a member's underpin date is sooner.
- from 1st April 2022, all LGPS membership accrues on a career average basis, with no underpin,
- but to ensure that there is an equivalent level of protection between older and younger members, the comparison of 2008 Scheme and 2014 Scheme benefits would take place at a qualifying member's underpin date, even if the underpin period ends sooner.

The revised underpin – application

65. This section describes how the revised underpin is intended to apply to qualifying members at different stages of their membership of the scheme, and at different life events.

Whilst in active membership

66. Whilst a qualifying member is in active service below their 2008 Scheme NPA, they will remain a member of the 2014 Scheme. For the period up to 31st March 2022, active qualifying members will accrue underpin protection. From 1st April 2022, accrual will be on a career average basis alone, but active qualifying members will retain a final salary link in relation to their underpin protection. Each year, a qualifying member's annual benefit statement will include an estimate of how the underpin would have applied to them if they had left the scheme at the end of the scheme year (i.e. as if their underpin date had been 31st March in that year). In these estimates, no account would be taken of actuarial adjustments relating to a member's age.

67. If a qualifying member remains in active service at their 2008 Scheme NPA (normally 65), their underpin date will be triggered in relation to their relevant scheme membership, meaning a comparison of their 2008 Scheme and 2014 Scheme pension (relating to the period from 1st April 2014 up to 31st March 2022, or their 2008 Scheme NPA if earlier) would be undertaken. This calculation would be based on the member's final pay as at their 2008 Scheme NPA (taking into account appropriate lookback provisions where appropriate). The member would be informed of the results of this comparison, but also informed that a check at their underpin crystallisation date would be undertaken at the point they take their benefits to ensure they are getting the higher benefit. Final salary increases or reductions beyond the member's 2008 Scheme NPA would not impact on the member's underpin protection.

Concurrent employments

68. Underpin protection may apply to qualifying members who hold two or more active memberships of the scheme at the same time ('concurrent employments'). Under our proposals, underpin protection would be linked to specific scheme memberships, with members who have 'relevant scheme membership' having underpin protection on that membership. Relevant scheme membership applies where:

- a member was an active member on 31st March 2012,
- a member has been an active member of the 2014 Scheme, and
- they did not have a disqualifying break in service.

69. Relevant scheme membership would apply in the normal way where a qualifying member has concurrent employments – for example, if a member has two posts and meets the criteria in one but not the other, they would have underpin protection in the former post, but not the latter. Where a qualifying member leaves a concurrent post in which they had relevant scheme membership before reaching their 2008 Scheme NPA their underpin date would apply in relation to that employment. If they were to then aggregate that membership with their ongoing post, the member would have a further

underpin date at the earlier of the date they leave that post or the date they reach their 2008 Scheme NPA.²⁹

At date of leaving (without taking scheme benefits)

70. Where an active qualifying member leaves the LGPS before their 2008 Scheme NPA with a deferred entitlement to benefits, their underpin date would apply at their date of leaving. A provisional underpin comparison would be undertaken for the period up to 31st March 2022, or to the member's date of leaving if earlier. The member would be informed of the results of this comparison, but also informed that a check at their underpin crystallisation date would be undertaken at the point they take their benefits to ensure they are getting the higher benefit.

Whilst a deferred member

71. For qualifying members who have had an underpin date after leaving active membership of the scheme with a deferred benefit, annual benefit statements sent to the member would include details of the provisional calculations undertaken at their underpin date. The results of these calculations would be adjusted to reflect cost of living changes between the member's underpin date and the date of their annual benefit statement.

Re-joiners

72. Where a qualifying member who has had an underpin date in respect of a relevant scheme membership re-joins the scheme without a disqualifying break in service and aggregates their previous scheme membership with their active pension account³⁰, they will retain continuing underpin protection for any service up to 31st March 2022. For service from April 2022 onwards, the member will retain a continuing final salary link in relation to their underpin protection (as well as in respect of their pre-2014 final salary membership). A further underpin date will occur at the date the member leaves active service or the date they reach their 2008 Scheme NPA.

Age retirement

73. When a qualifying member takes voluntary payment³¹ of their benefits in a relevant scheme membership at any age between 55 and 75, their underpin crystallisation date will apply. This means that the final comparison of their benefits will be undertaken to determine whether the 2014 Scheme or 2008 Scheme benefits would be better. For qualifying members who retire from active status and do so before their 2008 Scheme NPA, the member's underpin date will take place as at their date of leaving³². The underpin crystallisation date will take place upon their pension coming into payment.

²⁹ Under regulations 22(6) or (7) of the 2013 Regulations

³⁰ Under regulation 22 of the 2013 Regulations, all scheme members must have a pension account. Unless aggregated, members have multiple pension accounts for multiple periods of scheme membership.

³¹ Non-voluntary payment of benefits following redundancy and business efficiency are covered in paragraph 100.

³² As described in paragraph 67, where a qualifying member is in active service at their 2008 Scheme NPA, this would be their underpin date.

74. In the underpin crystallisation date calculation, the scheme administrator will take the provisional calculations from a qualifying member's underpin date and update these to take into account the effects of cost of living changes since the member's underpin date, as well as the impact of early/ late retirement factors. Where the final values show that the member would have been better off under the 2008 Scheme, an addition will be made to the member's 2014 pension account. The member's total pension in that relevant scheme membership for the period from 1st April 2014 to 31st March 2022 would also be payable without any further actuarial adjustment relating to the member's age.

Ill-health retirement

75. For most qualifying members retiring on ill-health grounds, their date of leaving will be their underpin date³³. As applies under the existing underpin provisions, the underpin calculation at a qualifying member's underpin date will take into account any enhancements that they may be due where they are receiving 'tier 1'³⁴ or 'tier 2'³⁵ benefits under regulation 39 of the 2013 Regulations, and compare these against the relevant enhancements that would have applied under the 2008 Scheme. This comparison of enhancements would apply up to the earlier of a qualifying member's 2008 Scheme NPA and 31st March 2022.

76. A qualifying member's ill-health retirement date will be their underpin crystallisation date, in all cases. This calculation will take into account cost of living adjustments between the member's underpin date and their underpin crystallisation date for members retiring from deferred or deferred pensioner status. No account will be taken of actuarial reductions relating to their age as these do not apply in relation to ill-health retirements, but where the qualifying member is over their 2008 Scheme or 2014 Scheme NPA, the impact of actuarial increases will be considered.

77. Whilst in most cases a member can only have one underpin crystallisation date, an exception applies in relation to members who have retired with 'tier 3'³⁶ benefits. As tier 3 pensions are temporary, a qualifying member would typically have an underpin crystallisation date at the point they begin receipt of their temporary pension and a subsequent one at the point they receive payment of their suspended pension from the scheme or the underpin otherwise crystallises (from deferred pensioner status). Whilst the

³³ With the exception of deferred or deferred pensioner members taking ill-health retirement under regulation 38 of the 2013 Regulations, and members who have previously reached their 2008 Scheme normal retirement age. Deferred pensioner members are members who were previously in receipt of a temporary tier 3 ill-health pension which has since ceased, and the member has not yet taken their main scheme benefits.

³⁴ Subject to other criteria that apply, tier 1 benefits apply to members retiring on ill-health grounds who are unlikely to be able to undertake gainful employment before their NPA (regulation 35(5)). Members receiving tier 1 benefits receive an adjustment to their pension equalling the full benefits they would have accrued between date of leaving and their 2014 Scheme NPA.

³⁵ Subject to other criteria that apply, tier 2 benefits apply to members retiring on ill-health grounds who are unlikely to be able to undertake gainful employment within three years of leaving the employment, but who are likely to be able to undertake gainful employment before reaching their NPA (regulation 35(6)). Members receiving tier 2 benefits receive an adjustment to their pension equalling 25% of the benefits they would have accrued between date of leaving and their 2014 Scheme NPA.

³⁶ Subject to other criteria that apply, tier 3 benefits apply to members who are likely to be capable of undertaking gainful employment within three years of their date of leaving (regulation 35(7)). Members receiving tier 3 benefits receive an unadjusted pension for a maximum of three years.

former calculation would not take into account actuarial reductions that may apply, the latter calculation would.

Death benefits

78. As noted earlier, under existing scheme regulations, it is sometimes unclear how scheme death benefits interact with the underpin. Our policy intent is set out in this section, and we have aimed to make these points clearer in the draft regulations. These clarifications are essential to ensuring that the underpin works effectively and consistently.

79. **Deaths in service** - For a qualifying member in active service, their date of death will be both their underpin date and their underpin crystallisation date. It is proposed that the underpin comparison would take into account the enhancements that apply under the 2008 and 2014 Scheme regulations in relation to deaths in service. This comparison of enhancements would apply up to the earlier of the qualifying member's 2008 Scheme NPA and 31st March 2022. This would be a new addition to the underpin regulations, and would be consistent with the approach taken in relation to ill-health retirements (outlined above in paragraph 75).

80. No adjustment relating to the underpin would apply to a qualifying member's death grant, as death grants for active members are based on a member's pay, not their pension.

81. Where survivor benefits are payable following a death in service of a qualifying member, the underpin comparison would be based on the provisional calculations and would not take into account the impact of early or late retirement factors which do not apply in relation to survivor benefits. Where there is an addition (i.e. the 2008 Scheme benefit is higher based on the unadjusted values), this addition would apply in the calculation of the survivor's benefit, at the appropriate accrual rate for each type of survivor.

82. **Deaths from deferred status** - Where a qualifying member dies from deferred status, their underpin date will have already taken place (on the date the member left active service, or on their 2008 Scheme NPA, if earlier). The day of the member's death would be their underpin crystallisation date.

83. Where survivor benefits are payable following a death from deferred status, the underpin comparison would be based on the provisional calculations and would not take into account the impact of early or late retirement factors which do not apply in relation to survivor benefits. Where there is an addition (i.e. the 2008 Scheme benefit is higher based on the unadjusted values), this addition would apply in the calculation of the survivor's benefit, at the appropriate accrual rate for each type of survivor.

84. Any addition arising from the provisional calculations undertaken at a member's underpin date will also apply in the calculation of the death grant. For deferred members, a death grant applies at 5 times the annual rate of pension, without actuarial adjustment relating to the age of the member.

85. **Deaths from pensioner status** – Where a qualifying member dies from pensioner status, the underpin date and the underpin crystallisation date will already have taken place.

86. Where survivor benefits are payable following the death of a pensioner, the underpin comparison will be based on the provisional calculations undertaken at a qualifying member's underpin date and will not take into account the impact of early or late retirement factors which do not apply in relation to survivor benefits. Where there is an addition (i.e. the 2008 Scheme benefit is higher based on the unadjusted values), this addition will apply in the calculation of the survivor's benefit, at the appropriate accrual rate for each type of survivor.

87. Any addition arising from the provisional underpin calculation will also apply in the calculation of the death grant, where applicable. For pensioner members, a death grant applies at 10 times the annual rate of pension, reduced by the actual amount of pension the member received prior to their death and by any lump sum commutation.

Public Sector Transfer Club transfers

88. The LGPS is a member of the Public Sector Transfer Club³⁷. The Club is an arrangement that facilitates the mobility of employment within the public sector by, for example, enabling employees to avoid the reduction in the value of their accrued pension that could otherwise occur as a result of changing employment. Final salary pension transferees are awarded a service credit that maintains the member's final salary link for the pension accrued in their previous scheme. CARE transferees are awarded a pension credit that continues the rate of in-service revaluation that was provided in the member's previous scheme. The intention of the Club is that a member should not lose out as a result of changing employment within the public sector. Equally, the member should not receive benefits that are higher in value than if they had not changed employment.

89. Separately, the Government is consulting³⁸ on proposals to remove the unlawful discrimination from the other main public service pension schemes. That consultation includes a section seeking views on how transfers under the Public Sector Transfer Club may work in relation to the remedy proposals outlined in that consultation. It sets out that one option would be for a member to make a choice between career average and final salary benefits at the date of transfer, so that only one set of scheme benefits for the remedy period needs to be considered for the transferred service.

90. The consultation also notes that considerations in the LGPS may be different, given the different nature of transitional protection in the LGPS and that we would consult on more detailed proposals in relation to Club transfers between the LGPS and the other public service pension schemes.

91. One approach, which would be consistent with the option outlined in the wider consultation, would be for the same principle to apply. This would mean the following:

- **For Club transfers of protected service (accrued between April 2015 and March 2022) into the LGPS** - the receiving LGPS fund would give the member the option of deciding whether they wanted to use the transfer to buy final salary

³⁷ <https://www.civilservicepensionscheme.org.uk/members/public-sector-transfer-club/>

³⁸ <https://www.gov.uk/government/consultations/public-service-pension-schemes-consultation-changes-to-the-transitional-arrangements-to-the-2015-schemes>

membership or career average pension in relation to the transferred service. Quotations would be provided to help members make an informed choice.

- **For Club transfers of protected service (accrued between April 2014 and March 2022) out of the LGPS** – the receiving scheme administrator would give the member the option of deciding whether they wanted to use the transfer to buy final salary membership or career average pension in relation to the transferred service (which in the LGPS would have provided them with underpin protection). Quotations would be provided to help members make an informed choice.

92. It should be noted that, in certain situations, a transferring member might be at an advantage if the transitional protection could continue in their new scheme (for example, if members transferring into the LGPS were to obtain underpin protection for protected service they transfer in, or LGPS members transferring out were to obtain a choice in their new schemes). However, such an approach would likely lead to significant administrative complexity across the public sector.

93. We propose that, consistent with existing LGPS regulations³⁹ that, where a member with final salary membership in another public service pension scheme transfers that membership into the LGPS, and they would have met the qualifying criteria for underpin protection in the LGPS had they been a member of the scheme, they would be granted underpin protection for their LGPS membership up to 31st March 2022. This would apply even if the initial transfer into the LGPS was not a Club transfer.

94. We welcome views from respondents on the options set out here. The final approach in relation to transfers within the Public Sector Transfer Club will be considered across Government, taking into account the responses to this consultation along with those to the wider consultation.

Non-Club transfers

95. Where a qualifying member transfers relevant scheme membership and the transfer is not a 'Club' transfer⁴⁰, a different approach is proposed. The date of transfer would be their underpin crystallisation date. In the draft regulations we propose the detailed requirements in relation to such cases will be contained in actuarial guidance issued by the Secretary of State. We propose that the actuarial guidance we issue will require the following approach:

- 1) Calculate Cash Equivalent Transfer Values (CETVs) of the following:
 - a) the member's accrued rights,
 - b) the member's 'provisional assumed benefits' (see **annex C**), and
 - c) the member's 'provisional underpin amount' (see **annex C**).

³⁹ Regulation 9(1) and (2) of the 2014 Regulations

⁴⁰ Either because it is not a transfer to a pension scheme in the Public Sector Transfer Club, or because it does not qualify as a Club transfer.

2) Where c) is greater than b), add the difference between the two amounts to a) and that is the total CETV.

3) Where c) is not greater than b), just pay the CETV based on the member's accrued rights (i.e. the CETV calculated at a)).

96. This approach would be consistent with the general approach taken to calculating pension benefits under the underpin, and should achieve a similar outcome.

97. Where a member with underpin protection has transferred in pension rights from another scheme that is not a public service pension scheme, the value of the transfer would not be taken into account for the purposes of the member's underpin calculations. This is the same as applies in relation to transfers under the existing underpin regulations.

Other ways of taking benefits

98. **Flexible retirement** – Where a qualifying member makes an election to reduce their working hours or grade in an employment, with their employer's consent, that would be their underpin date, even though they remain in active employment after this date. As applies under the existing underpin provisions, no further underpin protection would apply after a qualifying member's date of flexible retirement. The underpin crystallisation date calculation, also undertaken at the point of a member's flexible retirement, would take into account the impacts of early and late retirement factors to determine which scheme benefit is better for the individual.

99. Where a qualifying member takes 'partial' flexible retirement, i.e. they do not take all the benefits they accrued prior to their flexible retirement date straight away, there is a question about the appropriate treatment of the underpin. We propose that, in partial flexible retirement situations, where there is an addition to the member's pension arising from the underpin (i.e. because the 2008 Scheme benefit is higher), the amount of the addition given to the member at that point in time should be proportionate to the amount of the 2014 Scheme pension they are choosing to receive. For example, if a member is only receiving 20% of their 2014 Scheme pension upon flexibly retiring, they would only receive 20% of the underpin addition. The remainder would be payable at the point the member takes the rest of their benefits.

100. **Redundancy**⁴¹ – Redundancy below a qualifying member's 2008 Scheme NPA would trigger their underpin date. For members aged 55 or over, who have an immediate entitlement to their pension at point of redundancy, the date their redundancy pension commences would also be their underpin crystallisation date. As actuarial reductions do not apply in this situation, no account should be taken of these in the final underpin comparison. However, actuarial increases, where the member is made redundant after their 2008 Scheme or 2014 Scheme NPA, should be considered in the usual way.

101. **Trivial commutation**⁴² – Under regulation 34 of the 2013 Regulations, members with small total pension rights can extinguish their future right to a pension from the scheme

⁴¹ This paragraph also covers members leaving active membership of the LGPS on grounds of business efficiency.

⁴² This paragraph also covers members taking benefits via any of the other means referred to in regulation 34 of the 2013 Regulations. These payments are made at the discretion of administering authorities.

and receive a lump sum instead ('trivial commutation'). Under our proposals, qualifying members trivially commuting their pension will already have had their underpin date, as at their date of leaving the LGPS or reaching their 2008 Scheme NPA. If a qualifying member has not yet taken their pension, the date they trivially commute their benefits would be their underpin crystallisation date and the draft regulations propose the detailed requirements in relation to such cases will be contained in actuarial guidance issued by the Secretary of State. This is consistent with the general approach set out in the 2013 Regulations⁴³. We propose that the actuarial guidance we issue will require the following approach:

- 1) Calculate the trivial commutation sum due of the following:
 - a) the member's total accrued rights,
 - b) the member's 'provisional assumed benefits' (see **annex C**), and
 - c) the member's 'provisional underpin amount' (see **annex C**).
- 2) Where c) is greater than b), add the difference between the two amounts to a) and that is the total sum due.
- 3) Where c) is not greater than b), just pay the trivial commutation sum based on the member's accrued rights (i.e. the sum calculated at a)).

102. This approach would be consistent with the general approach taken to calculating pension benefits under the underpin, and should achieve a similar outcome. Where a qualifying member who trivially commutes their benefits has already taken their pension from the LGPS (and had an underpin crystallisation date in doing so), there would be no further underpin calculations due at the point of the trivial commutation.

Question 14 – Do you have any comments regarding the proposed approaches outlined above?

Question 15 – Do you consider there to be any notable omissions in our proposals on the changes to the underpin?

Supplementary matters

Annual benefit statements

103. Pension schemes are vitally important workplace benefits. For many people contributing to a pension scheme, the annual benefit statement (ABS) is the main way that they receive updates on the value of their pension and when they will be able to receive it. Whilst it is true that information presented on an ABS about the underpin cannot provide certainty to a qualifying member on their underpin protection (in most cases, there will not be certainty until a member's underpin crystallisation date), we believe it is important that estimates are provided on member ABSs if scheme regulations are amended in the

⁴³ Regulation 34(2) of the 2013 Regulations requires that payments of the description contained in regulation 34(1) are to be calculated in accordance with actuarial guidance issued by the Secretary of State.

manner outlined in this paper. Appropriate wording would need to be considered so that members have the information needed to understand how the underpin works and that the figures included in their statement are provisional, and may change. We would plan to ask the Scheme Advisory Board to lead on agreeing standardised wording that LGPS funds throughout England and Wales can include in ABSs regarding underpin protection.

104. Our draft regulations propose the following approach for members who meet the underpin qualifying criteria and have relevant scheme membership:

- That where a member is in active service below their 2008 Scheme NPA, their ABS should estimate the value of the underpin to the individual as if the end of the Scheme year⁴⁴ was their underpin date – including the provisional assumed benefits, the provisional underpin amount and any provisional guarantee amount.
- That where a member remains in active service beyond their 2008 Scheme NPA, their ABS should include the provisional estimates from the member's underpin date, as updated to reflect cost of living changes to the end of the Scheme year.
- For deferred and deferred pensioner members⁴⁵, their ABS should include the provisional estimates from the member's underpin date, as updated to reflect cost of living changes to the end of the Scheme year.

Question 16 – Do you agree that annual benefit statements should include information about a qualifying member's underpin protection?

Question 17 – Do you have any comments regarding how the underpin should be presented on annual benefit statements?

Annual allowance

105. The annual allowance is the maximum amount of tax-relieved pension savings that can be accrued by an individual in a year. The standard annual allowance is currently £40,000, but for those on the highest incomes, it tapers down to a minimum level of £10,000 (from April 2016 to March 2020) and to £4,000 (from April 2020). For defined benefit pension schemes like the LGPS, liability for tax charges above the annual allowance is calculated using the value of pension accrued in a particular year. Where an individual's pension accrual in a single year exceeds the annual allowance, then a tax charge may be due on the amount accrued above the member's annual allowance⁴⁶ to claw back the excess tax relief.

106. Whilst we would not expect a significant number of qualifying members to experience any change to their tax liability as a result of the proposals in this consultation document, it

⁴⁴ Under Schedule 1 of the 2013 Regulations, a period of one year beginning with 1st April and ending with 31st March.

⁴⁵ Deferred pensioner members are members who were previously in receipt of a temporary tier 3 ill-health pension which has since ceased, and the member has not yet taken their main scheme benefits.

⁴⁶ However, 'carry forward' provisions allow members to carry forward unused annual allowance for the previous three years.

is important that underpin protection is considered for the purposes of determining a qualifying member's annual allowance.

107. LGPS regulations do not contain detailed provisions regarding the application of pensions tax to scheme benefits. Scheme administrators must follow the pensions tax framework as set out in the Finance Act 2004 and secondary legislation, and as explained in HMRC's Pensions Tax Manual⁴⁷. Consistent with our approach generally, we do not plan to include in scheme regulations specific details regarding the tax treatment of the revised underpin.

108. We understand that, in accordance with guidance provided by the Local Government Association (LGA)⁴⁸, LGPS administrators have generally been taking the following approach in relation to the current underpin and the annual allowance:

- Whilst a protected member is in active service and their underpin date has not yet occurred, no account has been taken of a member's underpin protection for the purposes of determining a member's pension input amount in a given pension input period. This reflects that, under existing scheme regulations, a member may only receive an addition to their pension at the point of their underpin date.
- In the year of a protected member's underpin date, any addition in the member's pension arising from the comparison undertaken at the member's underpin date would be considered for the purposes of determining a member's pension input amount in that pension input period.

109. Whilst interpretation and application of the requirements of the Finance Act 2004 is a matter for individual administrators to consider, we believe that this approach is correct and would remain so if our proposals were to be implemented in scheme regulations. However, a change will be needed to reflect that, under our proposals, the point where an addition may arise from the underpin would be different. As described in paragraphs 61 and 62, our proposal is that the underpin moves to a 'two stage process'. Under this, a member's underpin protection can only result in a change to their pension entitlement at their 'underpin crystallisation date' and under our proposals it would be in this pension input period that the underpin should first be given consideration for the purposes of the annual allowance. As there would be no change to a member's pension entitlement at the point of a member's underpin date, the underpin should not be given consideration for annual allowance purposes in that pension input period⁴⁹.

110. However, we recognise that there may be circumstances where this approach means that a qualifying member has a higher pension input amount in the year of their underpin crystallisation date than an approach where the potential value of the underpin is considered on a year-by-year basis whilst a qualifying member remains in active membership. This may particularly be the case for qualifying members who have a relatively low career average pension for the years from 1st April 2014 to 31st March 2022, but a relatively high final salary pension over the same period. This may occur where a

⁴⁷ <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual>

⁴⁸ 'The Underpin' technical guide, latest version v1.8 (dated 18/07/2018), <http://lgpsregs.org/resources/guidesetc.php>

⁴⁹ Except where the member's underpin crystallisation date occurs in the same pension input period.

qualifying member is at an early stage of their career now, but goes on to be a high-earner in the future. We would appreciate views from stakeholders on the potential likelihood of this issue arising, the scale of the issue and how any impacts might be mitigated, if appropriate.

Question 18 – Do you have any comments on the potential issue identified in paragraph 110?

Public sector equality duty

111. The Ministry of Housing, Communities and Local Government has analysed the proposals set out in this consultation document (MHCLG) to fulfil the requirements of the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010. This requires the department to pay due regard to the need to:

- 1) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- 2) advance equality of opportunity between people who share a protected characteristic and those who do not
- 3) foster good relations between people who share a protected characteristic and those who do not.

Data

112. In undertaking our assessment of the equalities impacts of our proposals, we have drawn upon analysis provided to us by GAD. The analysis particularly looks at the protected characteristics of age and sex and is based on membership data supplied to GAD by LGPS administrators as at 31st March 2019. The following points should be borne in mind when considering the analysis:

- GAD's analysis has principally considered those who would benefit from the proposals outlined in this consultation. Members who already have underpin protection under existing provisions (being those aged 62 and older on 31st March 2019, who were aged at least 55 on 1st April 2012) have not been considered directly.
- GAD's analysis is based on active membership records totalling 1.68mn. The analysis has been conducted on a per-member basis, meaning additional records where members have more than one active employment have been removed.
- The proportion of the qualifying membership which is eventually likely to be better off as a result of underpin protection is heavily influenced by the rate of future pay growth in the LGPS. Consistent with the assumption used for the 2016 valuations of public service pension schemes, the long-term annual future pay growth assumption used is CPI + 2.2%.
- The analysis is based on the LGPS's active membership as at 31st March 2019. Under our proposals, the proposed changes to the underpin would be backdated to 1st April 2014. We would therefore expect that a number of additional members not

included in the analysis would benefit from our proposals. However, we do not anticipate this limitation would significantly change the results of the analysis.

- The analysis is based on an “average” member at each particular age. Allowing for variations in individual members’ future service or salary progression could produce different figures.

113. Limited data specific to the LGPS in England and Wales is available in relation to other protected characteristics. However, we have considered wider data from the Labour Force Survey (LFS) (Q1 2020)⁵⁰ and the Annual Population Survey (APS) (2019)⁵¹ in looking at the potential impacts of the following characteristics.

Age

114. The proposals outlined here are intended to remove age discrimination, which had been found to be unlawful in the firefighters’ and judicial pension schemes, from the LGPS rules governing the underpin. We consider that the changes proposed will significantly reduce differential impacts in how the underpin applies based on a member’s age, by removing the age-related qualifying criteria found to be unlawful by the Courts.

115. Based on analysis undertaken by GAD on active membership data for the LGPS as at 31st March 2019, we anticipate that some differences in how the revised underpin would apply to members of different age groups would remain. These are described below, along with our assessment of these differences.

116. **Qualification for the underpin** – GAD’s analysis shows that older active members on 31st March 2019 would be more likely to qualify for the revised underpin than younger active members. This is principally because of our proposal that the 31st March 2012 qualifying date for underpin protection is retained. The proportion of members active in the scheme as at 31st March 2019 who had been members of the scheme on 31st March 2012 is lower for younger members, as experience shows they have a higher withdrawal rate from active scheme membership. We consider that members joining the LGPS after 31st March 2012 do not need to be provided with underpin protection. Members joining the LGPS after 31st March 2012 fall into two groups:

- a) members who joined after 1st April 2014 when the LGPS had already reformed to a career average structure, and
- b) members who joined between 1st April 2012 and 31st March 2014, who joined the LGPS when it was still a final salary scheme, but when a well-publicised reform process was already underway.

117. In relation to both groups, it is the Government’s view that providing them underpin protection would not be appropriate. Transitional protection, as applied across public

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<https://www.ons.gov.uk/surveys/informationforhouseholdsandindividuals/householdandindividualsurveys/labourforcesurvey>

⁵¹

[https://www.nomisweb.co.uk/articles/1167.aspx#:~:text=The%20Annual%20Population%20Survey%20\(APS,regional%20\(local%20authority\)%20areas.](https://www.nomisweb.co.uk/articles/1167.aspx#:~:text=The%20Annual%20Population%20Survey%20(APS,regional%20(local%20authority)%20areas.)

service pension schemes, was always designed to help members with the transition from the old scheme designs to the new (in the LGPS, mainly in relation to the move from a final salary to a career average structure). Members who joined after 31st March 2012 will have joined the LGPS when either it had already transitioned to the career average structure, or when it was well publicised that the LGPS benefits were reforming.

118. Members who benefit from the underpin – GAD’s analysis shows that active members between the ages of 41 and 55 would be more likely to benefit from the revised underpin (i.e. where the calculated final salary benefit is higher than the calculated career average benefit) than both their younger and older colleagues. This reflects previous experience and future expectation that:

- this group are more likely than older colleagues to experience the pay progression that would make the final salary benefit higher over the underpin period (bearing in mind that the career average accrual rate (1/49ths) is better than the final salary accrual rate (1/60ths) so above inflation pay increases are needed for the underpin to lead to an increase in pension), and
- this group are more likely than younger colleagues to remain in active membership until they receive the pay progression necessary for the underpin to result in an addition to their pension. Younger members are estimated to have a higher voluntary withdrawal rate than older members, and so would be less likely to remain in the LGPS until such time as they have the pay increases for the final salary benefit to be higher.

119. These differential impacts reflect the fact that final salary schemes typically benefit members with particular career paths (for example, they usually favour high-earners with long service). The Government proposes to move all local government pensions accrual to a career average basis, without underpin protection, from April 2022 to apply a fairer system to all future service.

Sex

120. In relation to sex, GAD’s analysis shows that broadly the proportion of men and women who would qualify for the revised underpin protection and benefit from that protection matches the profile of the scheme. As at 31st March 2019:

- 74% of scheme members were female, and 26% male
- 73% of the scheme members who were estimated to qualify for the revised underpin protection were female, and 27% male
- 73% of the scheme members who were estimated to benefit from the revised underpin were female, and 27% male

121. Proportionally, GAD’s assessment is that men would be marginally more likely to qualify for the revised underpin and to benefit to a greater extent from underpin protection than women. This reflects the fact that, in line with previous scheme experience, the average male LGPS member would be expected to have higher salary progression than the average woman and that women are generally expected to have higher voluntary withdrawal rates than men. Members with longer scheme membership and with higher

salary progression would be more likely to receive an addition to their pension through the underpin (i.e. where the final salary benefit is higher).

122. These small differential impacts also demonstrate some of the effects that can arise under a final salary design. The Government proposes to move all local government pensions accrual to a career average basis, without underpin protection, from April 2022 to apply a fairer system to all future service.

Other protected characteristics

123. As noted in paragraph 113, limited data specific to the LGPS in England and Wales is available in relation to other protected characteristics. However, we have considered wider data from the LFS (Q1 2020) and the APS (2019) in looking at these characteristics. The LFS breaks down results to public sector level, which we have used as a proxy for LGPS membership for ethnicity, disability and marital status. For religion, the APS has been used as a proxy for the public service pension schemes as it also includes a public sector breakdown.

124. Whilst these data sets show some differences in the demographic make-up of the UK population generally and the public sector workforce, we do not consider that the changes to underpin protection proposed in the consultation will result in any differential impact to LGPS members with the following protected characteristics: disability, ethnicity, religion or belief, pregnancy and maternity, sexual orientation and marriage/civil partnership.

125. Data on sexual orientation, gender reassignment, pregnancy and maternity is not available. However, we expect there to be no differential impacts in relation to these groups as they won't be explicitly affected by any changes to transitional arrangements.

Next steps

126. Whilst we have detailed data on the protected characteristics of age and sex in relation to the LGPS membership, we are aware that our analysis of the impacts on other protected characteristics may be limited as it has not been based on local government specific data. We welcome suggestions from stakeholders of other data sets that may be available that may help us better understand the impacts on the LGPS membership more specifically.

127. We welcome views from stakeholders on our analysis, which is set out in more detail in the equalities impact assessment published alongside this consultation. These views will be considered in determining how to proceed following the consultation exercise. The potential equalities impacts of our proposals will be kept under review. A further equalities impact assessment will be undertaken following the consultation at the appropriate juncture.

Question 19 – Do the proposals contained in this consultation adequately address the discrimination found in the ‘McCloud’ and ‘Sargeant’ cases?

Question 20 – Do you agree with our equalities impact assessment?

Question 21 - Are you aware of additional data sets that would help assess the potential impacts of the proposed changes on the LGPS membership, in particular for the protected characteristics not covered by the GAD analysis (age and sex)?

Question 22 – Are there other comments or observations on equalities impacts you would wish to make?

Implementation and impacts

128. Following the closure of the consultation, we will consider the consultation responses received in detail to determine the best approach for removing the unlawful age discrimination from LGPS regulations.

129. The draft regulations at **annex B** have been prepared based on existing powers under the Public Service Pensions Act 2013. However, as noted in the wider Government consultation⁵² on removing the unlawful age discrimination from public service pension schemes, the Government intends to bring forward new primary legislation regarding public service pensions. When proposals for removing the unlawful discrimination are finalised, further consideration will be given to the appropriate powers for the changes, based on the legislation in force at the time.

130. We recognise that in the period between now and scheme regulations being amended, some members of the scheme who would be due to benefit from the changes outlined in this paper will crystallise scheme benefits. This will include voluntary age retirements, as well as ill-health retirements, redundancies and transfers. There will also be dependants of those qualifying members who sadly die before changes are implemented. In respect of all such cases, we would expect the retrospective application of our proposed amending regulations to ensure that, overall, members and their dependents would get the full benefit of the revised underpin.

Communications

131. As noted in paragraphs 103 and 104, member communications in relation to the proposals outlined here will be vitally important to ensure members understand what underpin protection is and how it may or may not apply to them. This is particularly important due to the complexities of the underpin. The two-stage process we describe in paragraphs 61 and 62 is designed to protect members and to provide clarity, but it is important its purpose is well explained, so that qualifying members understand that they may have an addition to their pension arising from the underpin, even if there was not an addition at their underpin date. Equally, qualifying members should be aware that the benefits payable from the 2014 Scheme are very good, and, for many, underpin protection will not result in an increase to their pension entitlement.

132. Communications aimed at scheme employers will also be important so that they understand the proposed changes, particularly bearing in mind the number and variety of LGPS employers (just over 18,000 in 2018/19). The changes outlined in this paper would lead to an upward pressure on scheme liabilities and, potentially, to future increases in employer contributions. It is vital that employers understand the potential changes and

⁵² <https://www.gov.uk/government/consultations/public-service-pension-schemes-consultation-changes-to-the-transitional-arrangements-to-the-2015-schemes>

how they may impact their funding position. More generally, employers would have a practical role in providing the data necessary for scheme administrators to deliver the changes outlined in this document, and should understand how these changes may impact upon them.

133. Achieving good communications, and deciding on the appropriate medium for those communications, will require input from stakeholders across the LGPS, including administering authorities, employers and trade unions. We are aware that the Scheme Advisory Board has already commenced discussions with the sector on communications and we are strongly supportive of this continuing. We will continue working with the Scheme Advisory Board on this in the coming months.

Question 23 – What principles should be adopted to help members and employers understand the implications of the proposals outlined in this paper?

Administration impacts

134. We are conscious that the proposals outlined in this consultation paper would require significant changes to administration practices and systems. Amongst other matters, local administrators would need to consider the appropriate prioritisation of cases after amendments to regulations are made. Recognising that the LGPS is a single scheme, albeit locally administered, we are supportive of there being consistency across the scheme in respect of prioritisation and hope to work with the sector and the Scheme Advisory Board to agree a standard approach.

135. Prioritisation decisions will be influenced by the fact that the revised underpin would have retrospective effect to April 2014, meaning that some members would already be in receipt of pensions that would need to be re-calculated, and retrospectively applied, in line with the new regulations.

136. A major challenge of implementing the changes proposed would apply in respect of obtaining additional data from employers for members who are newly benefitting from underpin protection – estimated to be around 1.2 million individuals. Under the 2014 Scheme, certain member data which was required for administering the 2008 Scheme (such as details of members' working hours and breaks in service) are not required for calculating member benefits. To administer the revised underpin, administrators would need to obtain this data for qualifying members for the period back to April 2014. This would be a highly significant exercise for the scheme's 87 administering authorities and its 18,000 employers. Particular challenges are likely to arise where employers have changed their payroll provider, and the data isn't stored in current systems.

Question 24 – Do you have any comments to make on the administrative impacts of the proposals outlined in this paper?

Question 25 – What principles should be adopted in determining how to prioritise cases?

Question 26 – Are there material ways in which the proposals could be simplified to ease the impacts on employers, software systems and scheme administrators?

137. We are grateful to the Scheme Advisory Board for their work on this project so far, in particular for their input on the remedy proposals outlined in this paper and for their establishment of working groups to consider some of the complex issues associated with this project.

138. We will continue working closely with the Scheme Advisory Board after the closure of the consultation as the sector prepares for the potential changes to scheme regulations. In particular, we intend to ask that the Scheme Advisory Board consider what guidance may be necessary to help administrators implement the proposed changes, and we are grateful for respondents' views on this.

139. Guidance would help support a consistent approach across the LGPS which would be desirable, in particular on matters like prioritisation. It would also potentially help on the complex issues connected with the fact that scheme employers would need to provide administrators with membership data going back to April 2014.

Question 27 – What issues should be covered in administrative guidance issued by the Scheme Advisory Board, in particular regarding the potential additional data requirements that would apply to employers?

Question 28 – On what matters should there be a consistent approach to implementation of the changes proposed?

Costs

140. The LGPS is a locally administered, funded scheme with three-yearly funding valuations to determine employer contribution rates. The next funding valuation is due on 31st March 2022⁵³. Employer contribution rates are, in most cases, determined on an individual employer basis, and take into account a number of factors, some related to the individual employer (such as membership demographics) and some related to the fund more broadly (such as the performance of fund investments since the previous valuation).

141. As a result of this backdrop, it is not possible to say how these changes would impact employer contribution rates at future valuations. However, the proposals in this paper can only lead to improvements in scheme benefits for qualifying members and, by necessity, there will be an upward pressure on liabilities. Because a variety of factors influence LGPS employer contribution rates, this upward pressure does not necessarily mean any particular employer's contributions will go up as a result of these changes, and administering authorities are required to smooth employer contributions as far as possible over the long term. Where any fund or employer would like to understand how these proposals may affect their own position, they should speak to their fund actuary. As scheme liabilities predominantly sit with local authorities and other public bodies, which are

⁵³ Under regulation 64 of the 2013 Regulations. In 2019, we consulted on potential changes to the funding valuation cycle - <https://www.gov.uk/government/consultations/local-government-pension-scheme-changes-to-the-local-valuation-cycle-and-management-of-employer-risk>. The Government has not yet responded to the proposal on the LGPS valuation cycle.

largely taxpayer funded, any employer contribution increases that do arise would need to be met, for the most part, by the taxpayer.

142. At a scheme level, costing estimates have been provided by the scheme actuary⁵⁴, the Government Actuary's Department, based on data provided by LGPS funds for the 2016 valuation. Assuming future member experience replicates the 2016 scheme valuation assumptions⁵⁵ the future cost to LGPS employers could be around £2.5bn in the coming decades. This is between 4% and 5% of the expected cost of benefits earned over the proposed underpin period, April 2014 to March 2022. However, if, for example, long-term real earnings growth were around a third lower than assumed for the 2016 valuation, we estimate the cost would roughly halve.

143. The costs are sensitive to both individual member experience and future pay. Predicting whether the underpin becomes valuable in the future depends heavily on assumptions on long-term future pay growth trends. In this estimate, we have used the 2016 valuation assumption that annual long-term pay growth is CPI + 2.2%. However, if long-term pay growth in the LGPS is lower than this, the costs may be lower (and vice versa).

144. The Government cost control mechanism was paused in February 2019 given the uncertainty arising from the McCloud judgment. The Government has made a separate announcement on the cost control mechanism⁵⁶. In addition to the main Government cost control mechanism for the LGPS, the LGPS has a separate cost control process run by the Scheme Advisory Board⁵⁷ which was also paused as a result of the uncertainty arising. We expect the Scheme Advisory Board will also take the decision to unpause their process following the Government's announcement.

Question 29 – Do you have any comments regarding the potential costs of McCloud remedy, and steps that should be taken to prevent increased costs being passed to local taxpayers?

⁵⁴ As appointed under regulation 114 of the 2013 Regulations

⁵⁵ Based on directions issued by HM Treasury and LGPS experience

⁵⁶ <https://www.gov.uk/government/consultations/public-service-pension-schemes-consultation-changes-to-the-transitional-arrangements-to-the-2015-schemes>

⁵⁷ Regulation 116 of the 2013 Regulations

About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal data, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation, and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, as a public authority, the Department is bound by the Freedom of Information Act and may therefore be obliged to disclose all or some of the information you provide. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Ministry of Housing, Communities and Local Government will process your personal data in accordance with the law and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. A full privacy notice is included at annex A.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact us via the [complaints procedure](#).

Annex A

Personal data

The following is to explain your rights and give you the information you are be entitled to under the Data Protection Act 2018.

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

1. The identity of the data controller and contact details of our Data Protection Officer

The Ministry of Housing, Communities and Local Government (MHCLG) is the data controller. The Data Protection Officer can be contacted at dataprotection@communities.gov.uk

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

3. Our legal basis for processing your personal data

Section 21(1) of the Public Service Pension Act 2013 states:

'Before making scheme regulations the responsible authority must consult such persons (or representatives of such persons) as appear to the authority likely to be affected by them'.

MHCLG will process personal data only as necessary for the effective performance of this duty. In this case, the Secretary of State is the responsible authority for the LGPS in England and Wales.

The Data Protection Act 2018 states that, as a government department, MHCLG may process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

3. With whom we will be sharing your personal data

We do not anticipate sharing personal data with any third party.

4. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for two years from the closure of the consultation.

5. Your rights, e.g. access, rectification, erasure

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right:

- a. to see what data we have about you

- b. to ask us to stop using your data, but keep it on record
- c. to ask to have all or some of your data deleted or corrected
- d. to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

- 6. Your personal data will not be sent overseas**
- 7. Your personal data will not be used for any automated decision making.**
- 8. Your personal data will be stored in a secure government IT system.**

Annex B – Draft regulations

STATUTORY INSTRUMENTS

2020 No.

PUBLIC SERVICE PENSIONS, ENGLAND AND WALES

The Local Government Pension Scheme (Amendment) Regulations 2020

Made - - - - - ***

Laid before Parliament ***

Coming into force - - - ***

The Secretary of State makes the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Amendment) Regulations 2020.

(2) These Regulations come into force on [XXXXXX] but regulations 2, 4, 5 and 6 have effect from 1st April 2014.

(3) These Regulations extend to England and Wales.

Amendment of the Local Government Pension Scheme Regulations 2013

2. The Local Government Pension Scheme Regulations 2013⁽⁵⁸⁾ are amended in accordance with regulations 3 and 4.

3. In regulation 89 (annual benefit statement) after paragraph (4) insert—

“(5) Where regulation 4 of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 applies the statement in respect of a relevant scheme membership must include the following additional information for active members who had not reached their 2008 Scheme normal retirement age at the end of the scheme year to which it relates—

- (a) the provisional guarantee amount;
- (b) the provisional assumed benefits; and
- (c) the provisional underpin amount

which would apply if the member’s underpin date was the closing date of the Scheme year to which the statement relates.

⁽⁵⁸⁾ S.I. 2013/2356; those Regulations have been amended by S.I. 2014/44, S.I. 2014/525, S.I. 2014/1146, S.I. 2015/57, S.I. 2015/755, S.I. 2018/493, S.I. 2019/1449.

(6) Where regulation 4 of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 applies the statement in respect of a relevant scheme membership must include the following additional information for deferred and deferred pensioner members—

- (a) the provisional guarantee amount;
- (b) the provisional assumed benefits; and
- (c) the provisional underpin amount

calculated as at their underpin date and adjusted by the appropriate index rate adjustment to the end of the Scheme year to which the statement relates.

(7) Where regulation 4 of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 applies the statement in respect of a relevant scheme membership must include the following additional information for active members who had reached their 2008 Scheme normal retirement age at the end of the relevant Scheme year—

- (a) the provisional guarantee amount;
- (b) the provisional assumed benefits; and
- (c) the provisional underpin amount

calculated as at their underpin date revalued to the end of the Scheme year to which the statement relates.

(8) The provisional guarantee amount is calculated in accordance with regulation 4(4) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014.

(9) The provisional assumed benefits are calculated in accordance with regulation 4(5) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014.

(10) The provisional underpin amount is calculated in accordance with regulation 4(6) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014.

4.—(1) In Schedule 1 (interpretation) after the definition of “registered pension scheme” insert—

“relevant scheme membership” has the meaning given by regulation 4(1A) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014;”

Amendment of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014

5. The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014⁽⁵⁹⁾ are amended in accordance with regulation 6.

6. In regulation 4 (statutory underpin)—

- (a) in paragraph (1)(a) omit the words from “and who on 1st April 2012” to the end;
- (b) for paragraph (1)(b) substitute—

“(b) is or has been an active member of the 2014 Scheme; and”

- (c) in paragraph (1)(c) substitute “; and” with “.”;
- (d) omit paragraph (1)(d);
- (e) at the end insert—

“(1A) For the purpose of this regulation a member’s relevant scheme membership is a single Scheme membership which meets the requirements of paragraph (1)(a), (1)(b) and (1)(c).

(1B) Where a member has had periods of concurrent employment, or a break in service that is not a disqualifying break in service, a member only has a relevant scheme membership if the member’s scheme membership including the period referred to in paragraph (1)(a) has been aggregated with their 2014 Scheme pension account, following a decision taken under—

⁽⁵⁹⁾ S.I. 2014/525.

- (a) regulations 16 or 17 of the Administration Regulations, where the member has subsequently joined the 2014 Scheme by virtue of regulation 5(1),
- (b) regulations 10(5) or (6) of these Regulations, or
- (c) regulations 22(5), 22(6), 22(7) or (8) of the 2013 Regulations.

(1C) Paragraph (1D) applies where;

- (a) an active or deferred member would otherwise have relevant Scheme membership;
- (b) but prior to [XXXXXXXX] previous Scheme membership including the period referred to in paragraph (1)(a) had not been aggregated with the member's 2014 Scheme pension account under paragraphs (1B)(a), (1B)(b) or (1B)(c).

(1D) Where this paragraph applies, an active or deferred member has a twelve month period commencing from [XXXXXXXXXX] to elect to aggregate the previous Scheme membership that would give the member relevant Scheme membership.

- (f) in paragraph (2) for "The underpin date" substitute "Subject to paragraphs (2A) and (2B) a member's underpin date in a relevant Scheme membership";
- (g) for paragraph (2)(b) substitute—

“(b) the date the member ceased to be an active member of the 2014 Scheme in an employment with a deferred or immediate entitlement to a pension; or”;

- (h) after paragraph 2(b) insert—

“(c) the date a member elects with their Scheme employer's consent to receive immediate payment under regulation 30(6) of the 2013 Regulations.”

- (i) after paragraph 2 insert—

“(2A) A member's date of death shall be their underpin date in a relevant Scheme membership where that date is earlier than the date provided for by paragraphs (2)(a) or (2)(b).

(2B) A member to whom paragraph (2)(b) has applied may have further underpin dates under paragraphs (2) or (2A) where they have either—

- (a) become an active member of the 2014 Scheme again before reaching their 2008 Scheme normal retirement age without a disqualifying break in service and aggregated their previous relevant scheme membership with their active member's pension account under regulation 22(8) of the 2013 Regulations, or
- (b) continued in active membership of the 2014 Scheme in an employment which had been concurrent with the employment through which they had an underpin date under paragraph (2)(b) and aggregated their previous relevant scheme membership with their active member's pension account under regulation 22(7) of the 2013 Regulations.”

- (j) for paragraph (3) substitute—

“(3) For the purpose of this regulation a disqualifying break in service is a continuous break after 31st March 2012 of more than 5 years in active membership of a public service pension scheme.”

- (k) for paragraph (4) substitute—

“(4) A member's provisional guarantee amount in a relevant scheme membership is the amount by which a member's provisional underpin amount exceeds the provisional assumed benefits on their underpin date.”

- (l) after paragraph (4) insert—

“(4A) Where paragraph (2B) applies, the value of the member's provisional assumed benefits, provisional underpin amount and provisional guarantee amount as calculated at their latest underpin date must be used for the purpose of this regulation.”

- (m) for paragraph (5) substitute—

“(5) The provisional assumed benefits are calculated by assessing the benefits the member would have been entitled to under the 2014 Scheme in a relevant Scheme membership if—”;

- (n) in paragraph (5)(a) substitute “the underpin date” with “31st March 2022 or the member’s underpin date, whichever date is the earlier”;
- (o) in paragraph (5)(b) substitute “the underpin date” with “31st March 2022 or the member’s underpin date, whichever date is the earlier”;
- (p) after paragraph (5) insert—
 - “(5A) Where the member’s pension has come into payment under regulation 35 of the 2013 Regulations, the provisional assumed benefits calculated in accordance with paragraph (5) must include any adjustment under regulation 39 of the 2013 Regulations for the period up to the earlier of the member’s 2008 Scheme normal retirement age and 31st March 2022.
 - (5B) Where a member’s underpin date has arisen under paragraph (2A), the provisional assumed benefits calculated in accordance with paragraph (5) must include the amount calculated under regulation 41(4)(b) of the 2013 Regulations for the period up to the earlier of the member’s 2008 Scheme normal retirement age and 31st March 2022.”
- (q) for paragraph (6) substitute—
 - “(6) The provisional underpin amount is calculated by assessing the benefits the member would have had an immediate entitlement to payment of under the 2008 Scheme in a relevant Scheme membership if—
- (r) in paragraph (6)(a) substitute “the underpin date” with “31st March 2022 or the member’s underpin date, whichever date is the earlier”;
- (s) in paragraph (6)(b)(iii)—
 - (i) substitute “the member’s assumed benefits” with “the member’s provisional assumed benefits”;
 - (ii) at the end add “but limited to the earlier of the member’s 2008 Scheme normal retirement age and 31st March 2022”
- (t) after paragraph (6) insert—
 - “(6A) Where a member’s underpin date has arisen under paragraph (2A), the provisional underpin amount calculated in accordance with paragraph (6) must include an amount equivalent to the enhancement that would apply under regulation 24(2) of the Benefits Regulations, for the period up to the earlier of the member’s 2008 Scheme normal retirement age and 31st March 2022.”
 - “(7) Subject to paragraph (8) a member’s underpin crystallisation date in a relevant Scheme membership is the earliest of the following dates—
 - (a) the date from which the member elects to receive payment of a retirement pension under regulations 30(1), 30(5) or 30(6) of the 2013 Regulations;
 - (b) the date from which the member becomes entitled to receive payment of a retirement pension under regulation 30(7) of the 2013 Regulations;
 - (c) the date from which the member becomes entitled to an ill-health retirement pension under regulation 35(1) or regulation 38(1) of the 2013 Regulations;
 - (d) the date the member receives payment under regulation 34 of the 2013 Regulations;
 - (e) the date the member transfers their benefits out of the 2013 Regulations following;
 - (i) an application made under regulation 96 of the 2013 Regulations; or
 - (ii) by virtue of regulation 98 of the 2013 Regulations.
 - (f) the date a member dies.
 - (8) A deferred pensioner member who has had an underpin crystallisation date in a relevant Scheme membership pursuant to paragraph (7) following receipt of Tier 3 benefits has an additional underpin crystallisation date which is the earliest of the subsequent events referred to in paragraphs (7)(a) to (f).

- (9) Where paragraphs 7(a), (b) or (c) apply to a member, the member's pension account must be increased by the final guarantee amount at the underpin crystallisation date.
- (10) The final guarantee amount is the amount by which the final underpin amount exceeds the final assumed benefits on the underpin crystallisation date.
- (11) Where a member who elects to receive payment of a retirement pension under regulation 30(6) of the 2013 Regulations has a final guarantee amount at their underpin crystallisation date, a proportion of that final guarantee amount equal to the proportion of the member's 2014 Scheme benefits that the member has elected to take under regulation 30(6) must be transferred to the member's flexible retirement pension account.
- (12) A final guarantee amount payable to a member pursuant to paragraph (7)(a) and the remainder of the member's final underpin amount are payable to the member without further actuarial adjustment relating to the age at which the benefits are taken.
- (13) When paragraph (7)(a) applies to a member the final assumed benefits for the member are the value of provisional assumed benefits calculated in accordance with paragraph (5) with the following adjustment—
 - (a) any revaluation adjustment or index rate adjustment that would have applied to the member's pension under the 2013 Regulations between the member's underpin date and their underpin crystallisation date; and
 - (b) any actuarial adjustment which would have applied under the 2013 Regulations, relating to the age at which the pension was taken.
- (14) When paragraph (7)(a) applies to a member the final underpin amount is the value of the provisional underpin amount calculated in accordance with paragraph (6) but—
 - (a) updated to the underpin crystallisation date to include increases which would have applied under the Benefits Regulations by virtue of the Pension (Increase) Act 1971⁽⁶⁰⁾ between a member's underpin date and their underpin crystallisation date; and
 - (b) including any actuarial adjustment which would have applied under the Benefits Regulations relating to the age at which the pension was taken.
- (15) When paragraph (7)(b) or (c) applies to a member the final assumed benefits for the member are the value of provisional assumed benefits calculated in accordance with paragraph (5) with the following adjustment—
 - (a) any revaluation adjustment or index rate adjustment that would have applied to the member's pension under the 2013 Regulations between the member's underpin date and their underpin crystallisation date; and
 - (b) any actuarial increase which would have applied under the 2013 Regulations, relating to the age at which the pension was taken.
- (16) When paragraph (7)(b) or (c) applies to a member the final underpin amount is the value of the provisional underpin amount calculated in accordance with paragraph (6) but—
 - (a) updated to the underpin crystallisation date to include increases which would have applied under the Benefits Regulations by virtue of the Pension (Increase) Act 1971 between a member's underpin date and their underpin crystallisation date; or
 - (b) including any actuarial increase which would have applied under the Benefits Regulations relating to the age at which the pension was taken.
- (17) When paragraphs (7) (d), (e) (i) or (e)(ii) apply to a member the value of the payment due at a member's underpin crystallisation date must be calculated in accordance with actuarial guidance issued by the Secretary of State.

⁽⁶⁰⁾ 1971 c. 56.

- (18) A request for a cash equivalent value of a member's pension rights under Regulation 4 of the Pension Sharing (Valuation) Regulation 2000⁽⁶¹⁾ is not to be treated as a member's underpin date or underpin crystallisation date.
- (19) A request made pursuant to paragraph (18) is to be calculated in accordance with actuarial guidance issued by the Secretary of State.
- (20) Following the death of a person to whom this regulation applies, any provisional guarantee amount applicable at the member's underpin date must be updated to include any revaluation adjustment or index rate adjustment that would have applied to the member's pension under the 2013 Regulations between the member's underpin date and their date of death, and shall be known as the member's adjusted provisional guarantee amount.
- (21) Where, pursuant to paragraph (20), a provisional guarantee amount applied at a deceased member's underpin date, the rate listed in column two of the below table must be applied to the adjusted provisional guarantee amount, to determine the addition to the relevant survivor benefit.

| <i>2013 Regulation</i> | <i>Rate</i> |
|------------------------|-------------|
| 41(4) | 49/160 |
| 42(4) | 49/320 |
| 42(5) | 49/160 |
| 42(9) | 49/240 |
| 42(10) | 49/120 |
| 44(4) | 49/160 |
| 45(4) | 49/320 |
| 45(5) | 49/160 |
| 45(9) | 49/240 |
| 45(10) | 49/120 |
| 47(4) | 49/160 |
| 48(4) | 49/320 |
| 48(5) | 49/160 |
| 48(9) | 49/240 |
| 48(10) | 49/120 |

(22) Where, pursuant to paragraph (20), a provisional guarantee amount applied at a deceased member's underpin date, the adjusted provisional guarantee amount must be used in determining the annual amount of pension the member would have been entitled to under regulations 43(3) and 46(3) of the 2013 Regulations.

We consent to the making of these Regulations

Names
Two of the Lords Commissioners of Her Majesty's Treasury

Signed by authority of the Secretary of State for Housing, Communities and Local Government

Name
Parliamentary Under Secretary of State
Ministry of Housing, Communities and Local Government

Date

⁽⁶¹⁾ S.I. 2000/1052.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (“the Transitional Regulations”). Both sets of regulations came substantively into effect on 1st April 2014 and certain provisions listed in regulation 1 take effect from that date.

Regulations 2 to 4 amend the Local Government Pension Scheme Regulations 2013.

Regulations 5 and 6 amend the Transitional Regulations in regards to the operation of the underpin.

An impact assessment has not been produced for this instrument as no impact is anticipated on the private or voluntary sectors.

Annex C – The two-stage process

As outlined in paragraphs 61 and 62, we are proposing the introduction of a two-stage process for calculating a qualifying member's entitlement from the underpin. Under this, calculations would take place at a qualifying member's underpin date and their underpin crystallisation date. This annex contains further details on the proposals we set out in our draft regulations.

The underpin date – proposed approach

- A qualifying member's underpin date would be the earlier of:
 - the date they leave active service with an immediate or deferred entitlement to a pension,
 - the date they reach their 2008 Scheme NPA, or
 - the date they die.
- The underpin date would relate to a specific 'relevant scheme membership' – i.e. a single, aggregated (where appropriate), scheme membership in which the member:
 - was active in the LGPS on 31st March 2012,
 - had membership of the 2014 Scheme, and
 - did not have a disqualifying break in service.
- It is possible a qualifying member may have two (or more) relevant scheme memberships. Where this applies, they may have different underpin dates in respect of each one.
- At a qualifying member's underpin date, an initial comparison of the member's 2014 Scheme and 2008 Scheme benefits would be undertaken based on:
 - the member's 'provisional assumed benefits' in a relevant scheme membership – broadly⁶², the career average benefits they have accrued in the 2014 Scheme over the underpin period⁶³, and
 - the member's 'provisional underpin amount' in a relevant scheme membership – broadly, the final salary benefits the member would have built up in the 2008 Scheme over the same period⁶⁴.

⁶² For members who have had a period in the 50/50 section of the 2014 Scheme, the underpin calculation assumes the member remained in the full section of the 2014 Scheme.

⁶³ The underpin period runs from 1st April 2014 to 31st March 2022, or to the member's underpin date where that is earlier than 31st March 2022.

⁶⁴ If the underpin date is after 31st March 2022, the member's final salary for the year up to their underpin date would be used for the purposes of calculating their provisional underpin amount.

- If the provisional underpin amount is higher than the provisional assumed benefits at a qualifying member's underpin date, the member would be awarded a 'provisional guarantee amount' in respect of that relevant scheme membership.
- A provisional guarantee amount is a provisional assessment that the 2008 Scheme benefits would have been better for the member. At a qualifying member's underpin date, there would be no change to their pension entitlement arising from the provisional guarantee amount⁶⁵. However, annual benefit statements sent to the member after their underpin date would confirm if a provisional guarantee amount has applied.
- Qualifying members may have multiple underpin dates in respect of a relevant scheme membership. This may occur where:
 - The member has concurrent employments and ceases to be an active member in one before their 2008 Scheme NPA (in which they have relevant scheme membership). An underpin date would apply at the point the member leaves the LGPS in that post. If the member then aggregates their relevant scheme membership with their ongoing post, a further underpin date would apply at the earlier of the following:
 - the date they leave active service,
 - the date they reach their 2008 Scheme NPA, or
 - the date they die.
 - The member leaves an employment in which they have relevant scheme membership with an immediate or deferred entitlement to a pension. An underpin date would apply at their date of leaving. If the member then re-joins the LGPS and aggregates their membership (without a disqualifying break in service), a further underpin date would apply at the earlier of the following:
 - the date they leave active service,
 - the date they reach their 2008 Scheme NPA, or
 - the date they die.
- Where a qualifying member has multiple underpin dates, it would be their provisional amounts from their latest underpin date that would be used for the purposes of the calculations at their underpin crystallisation date.

⁶⁵ Unless their underpin crystallisation date immediately follows their underpin date – for example, if a member takes immediate payment of their benefits upon leaving the scheme.

The underpin crystallisation date – proposed approach

- As the period between a qualifying member's underpin date and the date they take their benefits from the LGPS could be as much as 30 or 40 years, we propose that all qualifying members have an underpin crystallisation date in respect of a relevant scheme membership. This would ensure the comparison can be made when there is certainty on the final actuarial adjustments that might be applied, and in respect of the member's State Pension age.
- A variety of circumstances would give rise to a qualifying member's underpin crystallisation date and, in general⁶⁶, a qualifying member can only have one underpin crystallisation date in respect of a relevant scheme membership. A qualifying member's underpin crystallisation date would be the earliest of the following in respect of a relevant scheme membership:
 - the date a member takes voluntary payment of their pension, at any age between 55 and 75,
 - the date a member takes flexible retirement,
 - the date a member aged 55 or over leaves active membership as a result of redundancy, or due to business efficiency,
 - the date a member retires on ill-health grounds,
 - the date a member transfers out or trivially commutes their benefits, or
 - the date a member dies.
- What happens at a qualifying member's underpin crystallisation date would vary, and is described in more detail for each circumstance in 'the revised underpin – application' section in the body of this document. In most cases, however, it would involve a member's provisional underpin amount and their provisional assumed benefits being updated to give a member's 'final underpin amount' and their 'final assumed benefits'. How the provisional figures are updated to become final figures would vary depending on the circumstance. The below table summarises what is proposed to apply under the draft regulations.

| Circumstance giving rise to a member's underpin crystallisation date | How provisional underpin amount and provisional assumed benefits calculated at a qualifying member's underpin date are updated at a member's underpin crystallisation date |
|----------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | |

⁶⁶ An exception applies in relation to members who receive a temporary (tier 3) ill-health pension. For such members, they will have an underpin crystallisation date upon receiving their temporary ill-health pension and then a subsequent one when their underpin crystallises from 'deferred pensioner' status.

| | |
|---------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Voluntary age retirement or flexible retirement | <ul style="list-style-type: none"> • To include any cost of living increases that would have applied to the member's pension under the 2008 or 2014 Schemes between the member's underpin date and their underpin crystallisation date, and • To include any actuarial adjustments relating to the member's age, that would have applied under the 2008 or the 2014 Schemes. |
| Redundancy ⁶⁷ and ill-health pension being paid (from active or deferred status) | <ul style="list-style-type: none"> • To include any cost of living increases that would have applied to the member's pension under the 2008 or 2014 Schemes between the member's underpin date and their underpin crystallisation date, and • To include any actuarial increases relating to the member's age, that would have applied under the 2008 Scheme and 2014 Scheme. |

- Where a qualifying member's final underpin amount is higher than their final assumed benefits at their underpin crystallisation date, the member would be awarded a 'final guarantee amount' in respect of that relevant scheme membership. An addition would be made to their pension account in respect of that final guarantee amount.
- For certain types of underpin crystallisation, the draft regulations do not prescribe that members' provisional underpin amount and provisional assumed benefits are updated to give 'final' amounts. This applies in the following cases:
 - Transfers out – instead, administrators would need to comply with actuarial guidance issued by the Secretary of State, and the Public Sector Transfer Club memorandum, where appropriate
 - Trivial commutations – instead, administrators would need to comply with actuarial guidance issued by the Secretary of State
 - Deaths – instead, the regulations prescribe what should apply in relation to any survivor benefits that may be payable.

⁶⁷ Including termination on grounds of business efficiency

Annex D – Illustrative examples

This annex provides examples to illustrate how the proposed underpin would operate in different situations. These examples illustrate some (but not all) of the factors which may impact whether or not an underpin addition may apply in different situations.

The examples shown are:

1. Retirement from active service at age 65
2. Retirement from active service at State Pension age ('SPa')
3. Early retirement from active service at age 60
4. Deferred retirement with no underpin at underpin date
5. Deferred retirement with an underpin at underpin date

All the examples are based on a member aged 47 in 2012, who did not receive underpin protection originally. This member has a 2014 Scheme normal pension age equivalent to their SPa under the current timetable, 67.

The examples rely on the following assumptions:

- The pension calculated is the pension accrued over the underpin period (1st April 2014 to 31st March 2022), as payable at retirement. In practice, such members will also have pension relating to pre-2014 and post-2022 periods which is not considered here.
- Inflation reflects actual experience up to 2020, with 2% pa assumed thereafter; increases are applied on 1 April.
- Salary increases, promotions and retirements occur on 31st March in the relevant year.
- The current State Pension age timetable is followed.
- The pension amounts are in nominal terms at retirement.
- The amounts are shown rounded to the nearest £10.

Please note that these examples are for illustrative purposes only. Generally, they only consider one of the key variables which may impact how the proposed underpin would apply to a member, in practice other variables may also be significant. The comparisons are based on the pension payable at retirement.

Example 1 (retirement at age 65)

In **2012 the member was aged 47**, and so **did not receive underpin protection originally**. However, under our proposals, an underpin check would be undertaken to ensure that their benefits in the eight year underpin period are the greater of either:

| 2014 Scheme | 2008 Scheme |
|---------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|
| 1/49 th of revalued salary each year Payable unreduced from State Pension age | 1/60 th of final salary each year Payable unreduced from age 65 |

In this example the member's underpin date will be the same as the underpin crystallisation date and, practically, only one check will be required.

As the member is taking their benefits immediately upon leaving, we can adjust the 2014 Scheme pension to allow for this being paid two years earlier than their 2014 Scheme normal pension age (age 67). No adjustment would be required in this example for the calculation of the 2008 Scheme benefit (as this would be paid without adjustment from age 65).

If the member had a **salary of £30,000 in 2014**, experiences future annual **salary increases of 1% above inflation** and **retires at age 65**, their pensions over the underpin period would be as follows:

| | |
|------------------------------------|------------------------------------|
| 2014 Scheme (age 65): £6,100 pa | 2008 Scheme (age 65): £6,060 pa |
|------------------------------------|------------------------------------|

In this example the member's 2014 Scheme benefits are higher and there would be **no underpin addition required**.

Alternatively

If the member was promoted twice, receiving **an additional 5% salary increase** at the end of the underpin period **and an additional 5% salary increase** five years later, the underpin is now more than the age-adjusted 2014 Scheme pension at age 65:

| | |
|------------------------------------|------------------------------------|
| 2014 Scheme (age 65): £6,100 pa | 2008 Scheme (age 65): £6,670 pa |
|------------------------------------|------------------------------------|

The **final guarantee amount** is the difference between these two amounts which equals £570. Following high salary increases the 2008 Scheme benefit structure becomes relatively more valuable and hence an **underpin addition** would be required. The 2014 Scheme benefit would be increased by the underpin addition of £570 per year.

Example 2 (retirement at SPa)

In **2012 the member was aged 47**, and so **did not receive underpin protection originally**. However, under our proposals, an underpin check would be undertaken to ensure that their benefits in the eight year underpin period are the greater of either:

| 2014 Scheme | 2008 Scheme |
|--------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|
| 1/49 ^h of revalued salary each year Payable unreduced from State Pension age | 1/60 th of final salary each year Payable unreduced from age 65 |

In this example the member's underpin date will be when the member reaches age 65. At the underpin date the 2014 Scheme and 2008 Scheme benefits will be compared (with no allowance for actuarial adjustment).

If the member has the same **salary of £30,000 in 2014**, experiences future annual **salary increases of 1% above inflation** and **retires at Spa** (67, in this case), the comparison at the underpin date is as follows:

| | |
|------------------------------------|------------------------------------|
| 2014 Scheme (age 65): £6,770 pa | 2008 Scheme (age 65): £6,060 pa |
|------------------------------------|------------------------------------|

The check at the underpin date shows the 2014 Scheme benefits are greater than the 2008 Scheme benefits and therefore **no 'provisional guarantee amount'** is required.

A subsequent test will be carried out at the member's underpin crystallisation date, their retirement age, SPa (age 67), when the revalued pension amounts and correct actuarial adjustment factors are known. In both cases the provisional assumed benefits and provisional underpin amount will be revalued in line with cost of living between age 65 and retirement. No actuarial adjustment will be required for the 2014 Scheme benefit, however the 2008 Scheme benefit is increased by two years late retirement factors:

| | |
|---------------------------------|---------------------------------|
| 2014 Scheme (SPa): £7,040 pa | 2008 Scheme (SPa): £6,770 pa |
|---------------------------------|---------------------------------|

For this member **no underpin addition** would be required.

Alternatively

However, if the member was promoted twice, receiving **an additional 5% salary increase** at the end of the underpin period and **an additional 5% salary increase** five years later, the comparison at the underpin date (age 65) is now:

| | |
|------------------------------------|------------------------------------|
| 2014 Scheme (age 65): £6,770 pa | 2008 Scheme (age 65): £6,670 pa |
|------------------------------------|------------------------------------|

The check at the underpin date shows **no 'provisional guarantee amount'** is required.

A further check would be undertaken when the member takes their pension at their underpin crystallisation date, SPa (age 67). This check shows that once revaluation and different actuarial adjustments are allowed for the 2008 Scheme benefits are higher and the difference or **final guarantee amount** would be £400. The member's 2014 Scheme benefit would be increased by an **underpin addition** of £400 per year.

2014 Scheme (SPa):
£7,040 pa

2008 Scheme (SPa):
£7,440 pa

Example 3 (early retirement)

In **2012 the member was aged 47**, and so **did not receive underpin protection originally**. However, under our proposals, an underpin check would be undertaken to ensure that their benefits in the eight year underpin period are the greater of either:

2014 Scheme

1/49th of revalued salary each year
Payable unreduced from State Pension age

2008 Scheme

1/60th of final salary each year
Payable unreduced from age 65

In this example the member's underpin date will be the same as the underpin crystallisation date and, practically, only one check will be required.

As the member is taking their benefits immediately upon leaving, we can adjust the 2014 Scheme pension to allow for this being paid seven years earlier than the 2014 Scheme normal pension age (SPa, age 67); and the 2008 Scheme benefits are also reduced to reflect that this is being paid five years earlier.

If the member had a **salary of £30,000 in 2014**, experiences future annual **salary increases of 1% above inflation** and **retires at age 60**, their pensions over the underpin period would be as follows:

2014 Scheme (age 60):
£4,350 pa

2008 Scheme (age 60):
£4,070 pa

In this example the member's 2014 Scheme benefits are higher and there would be **no underpin addition** required.

Alternatively

If the member was promoted twice, receiving **an additional 10% salary increase** at the end of the underpin period **and an additional 5% salary increase** five years later, the 2008 Scheme benefit is now more than the 2014 Scheme pension at age 60:

2014 Scheme (age 60):
£4,350 pa

2008 Scheme (age 60):
£4,460 pa

Following high salary increases the 2008 Scheme benefit structure becomes relatively higher and hence an **underpin addition** would now be required. The 2014 Scheme benefit would be increased by £110 pa.

Example 4 (retirement from deferment #1)

In **2012 the member was aged 47**, and so **did not receive underpin protection originally**. However, under our proposals, an underpin check would be undertaken to ensure that their benefits in the eight year underpin period are the greater of either:

| 2014 Scheme | 2008 Scheme |
|--------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|
| 1/49 ^h of revalued salary each year Payable unreduced from State Pension age | 1/60 th of final salary each year Payable unreduced from age 65 |

The example shows how the underpin check would work where the member leaves service at age 58 (with a deferred pension) which they subsequently draw at age 67. Under our proposals, an initial underpin check would be undertaken at the date of leaving active service (their underpin date) which would compare the 2014 Scheme benefits with the 2008 Scheme benefits over the underpin period. This comparison would not consider the effect of actuarial adjustments for age, as these would not be known at the member's underpin date.

If they had a **salary of £30,000 in 2014**, experience future annual **salary increases of 1% above inflation** until **leaving the scheme at age 58**, the pensions over the underpin period would be as follows:

| | |
|---------------------------|---------------------------|
| 2014 Scheme: £5,890 pa | 2008 Scheme: £4,930 pa |
|---------------------------|---------------------------|

The check at the underpin date shows the 2014 Scheme benefits are greater than the 2008 Scheme benefits and **no 'provisional guarantee amount'** is required.

A subsequent underpin crystallisation test will be carried out when the member takes their pension at SPa (age 67), when the final revalued amounts and correct actuarial adjustment factors are known. In both cases the pension amounts will be revalued in line with cost of living between age 58 and retirement. No further actuarial adjustment will be required for the 2014 Scheme benefit, however the 2008 Scheme benefit is increased by two years' late retirement factors:

| | |
|---------------------------------|---------------------------------|
| 2014 Scheme (SPa): £7,040 pa | 2008 Scheme (SPa): £6,320 pa |
|---------------------------------|---------------------------------|

In this example the member's 2014 Scheme benefits are higher and there would be **no underpin addition** required.

Alternatively

If the member was promoted twice, receiving **an additional 5% salary increase** halfway through the underpin period and **an additional 10% salary increase** at the end of the underpin period, the calculations at the underpin date would show the 2014 Scheme benefits are higher:

2014 Scheme:
£6,040 pa

2008 Scheme:
£5,670 pa

A further test would be undertaken at the underpin crystallisation date; when the member retires (SPa, age 67). This check shows that once revaluation and different actuarial adjustments are allowed for the 2008 Scheme benefits are higher and the difference or **'final guarantee amount'** would be £50.

2014 Scheme (SPa):
£7,220 pa

2008 Scheme (SPa):
£7,270 pa

Following high salary increases the 2008 Scheme benefit structure becomes relatively more valuable and hence an underpin addition would now be required. The 2014 Scheme benefit would be increased by £50 pa.

Example 5 (retirement from deferment #2)

In **2012 the member was aged 47**, and so **did not receive underpin protection originally**. However, under our proposals, an underpin check would be undertaken to ensure that their benefits in the eight year underpin period are the greater of either:

| 2014 Scheme | 2008 Scheme |
|--------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|
| 1/49 ^h of revalued salary each year Payable unreduced from State Pension age | 1/60 th of final salary each year Payable unreduced from age 65 |

This example shows how the underpin check would work where the member leaves service at age 63 (with a deferred pension) which they subsequently draw at age 67. Under our proposals, an initial underpin check would be undertaken at the date of leaving active service (their underpin date) which would compare the 2014 Scheme benefits with the 2008 Scheme benefits over the underpin period. This comparison would not consider the effect of actuarial adjustments for age, as these would not be known at the member's underpin date.

If the member has a **salary of £30,000 in 2014**, experiences future annual **salary increases of 1% above inflation**, an **additional 10% salary increase** halfway through the underpin period and an **additional 10% salary increase** at the end of the underpin period until **leaving the scheme at age 63**, the relative pensions over the underpin period would be as follows:

| | |
|---------------------------|---------------------------|
| 2014 Scheme: £6,830 pa | 2008 Scheme: £6,870 pa |
|---------------------------|---------------------------|

In this example there is a **'provisional guarantee amount'** of £40 pa.

A subsequent test will be carried out at the member's underpin crystallisation date, their retirement age, SPa (age 67), when the final revalued amounts and correct actuarial adjustment factors are known. In both cases the pension amounts will be revalued in line with cost of living between age 63 and retirement. No further actuarial adjustment will be required for the 2014 Scheme benefit, however the 2008 Scheme benefit is increased by two years' late retirement factors:

| | |
|---------------------------------|---------------------------------|
| 2014 Scheme (SPa): £7,390 pa | 2008 Scheme (SPa): £7,980 pa |
|---------------------------------|---------------------------------|

This check shows that once revaluation and different actuarial adjustments are allowed for, the 2008 Scheme benefits are higher and the difference or **final guarantee amount**

would be £490. The member's 2014 Scheme benefit would be increased by an **underpin addition** of £490pa.

This again illustrates that following high salary increases the 2008 Scheme benefit structure can become relatively more valuable than the 2014 Scheme benefit, and also how the required underpin addition can change between a member's underpin date and their underpin crystallisation date.

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Portfolio Holder Decision – Response to Government Consultation on the McCloud remedy and its impact on the Fire Fighters' Pension Scheme

| | |
|-------------------------|--------------------------------------------------|
| Portfolio Holder | Portfolio Holder for Finance and Property |
| Date of decision | 28 September 2020 |
| | Signed |

Decision taken

Portfolio Holder for Finance and Property approves the draft response to the HM Treasury consultation questions in respect of the proposed amendments to the Firefighters Pension Scheme.

That the Strategic Director Resources, in consultation with the Portfolio Holder, is authorised to finalise and submit the response to government.

Reasons for decisions

As part of the 2015 reforms, those within 10 years of retirement remained in their legacy pension schemes. This transitional protection was provided following negotiations with member representatives and was intended to protect and give certainty to people who were close to retirement.

In December 2018 the Court of Appeal found that this part of the reforms unlawfully discriminated against younger members of the judicial and firefighters' pension schemes in particular as transitional protection was only offered to older scheme members. The Courts required that this unlawful discrimination be remedied by the government. This document sets out the government's proposals for doing so.

Background information

The government proposes to introduce legislation:

- i.) to make changes to the schemes to remove the discrimination identified by the Courts for the period 1 April 2015 to 31 March 2022 (the remedy period); and
- ii.) to address future service beyond the remedy period. In relation to the remedy period, simply extending the transitional arrangements to all eligible members - effectively placing them all back in their legacy schemes - could make many members worse off.

The government proposes to provide members with the option to choose between receiving legacy or reformed scheme benefits in respect of their service during the period between 1 April 2015 and 31 March 2022. This is referred to as the remedy period. This consultation seeks views on that proposal and especially on the two possible approaches: i.) an immediate choice; or ii.) a deferred choice underpin (DCU)

Under the immediate choice exercise, members would make this decision in the year or two after the point of implementation in 2022. For many members, this will be some years prior to retirement, and at a time when there is still some uncertainty over the precise benefits that would accrue to them in the alternative schemes.

In contrast, under DCU, this decision would be deferred until the point at which a member retires (or when they take their pension benefits). Until that deferred choice is made, all members would be deemed to have accrued benefits in the legacy scheme, rather than the reformed scheme, for the remedy period.

The government is therefore consulting on further changes that would ensure members can keep or choose benefits in the reformed schemes if they wish. This would mean those who did not have transitional protection (and so moved to the reformed schemes in 2015) could choose to keep those benefits they have accrued in the reformed schemes, and those who did have transitional protection (and so did not originally have access to the reformed schemes) can now choose to have such access.

A coordinated response to the 24 questions raised in the consultation document will be submitted on behalf of the Council. Representatives from Pensions Administration, HR, payroll, finance and the Fire Service will all take part in this exercise.

This consultation will close at midnight on Sunday 11 October.

Financial implications

There is likely to be a cost to the Fire Service, but this ultimately depends on the demographic of the scheme members. The Government Actuaries Department (GAD) have included a request for additional information for members in scope, so that the cost of increasing benefits can be factored into the 2020 valuation of the Firefighter schemes.

Because the proposed amendments are retrospective to April 2015 there are additional administrative costs in recalculating the benefit entitlement for retired and dependant members, early leavers with a preserved entitlement and members who have transferred

their entitlement to other pension schemes. An early indication is that this work will cost in the region of £32,000, but this figure will be refined as work progresses and the number of members in scope is confirmed. This cost will need to be funded by Warwickshire Fire & Rescue Service.

Environmental implications

None

| | |
|---------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
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| Lead Director | Strategic Director for Resources |
| Lead Member | Portfolio Holder for Finance and Property |

| | |
|---------------------------------------------------------------------|----|
| Urgent matter? | No |
| Confidential or exempt? | No |
| Is the decision contrary to the budget and policy framework? | No |

List of background papers

- Appendix 1: Response to consultation
- Appendix 2: Home Office Immediate Detriment Guidance
- Appendix 3: HM Treasury Public service pension schemes: changes to the transitional arrangements to the 2015 schemes Consultation

Members and officers consulted and informed

Portfolio Holder – Councillor Butlin

Corporate Board – Rob Powell

Legal – Jane Pollard

Finance – Andrew Felton

Equality – Keira Rounsley

Democratic Services – Helen Bardsley

Councillors – Andy Crump

Local Member(s):

Firefighters’/Police Pension Schemes

McCloud/Sargeant ruling – Guidance on treatment of ‘Immediate Detriment’ cases

1.0 Purpose of guidance

- 1.1 The purpose of this note is to provide informal guidance to Fire and Rescue Authorities (in England) and Police Forces (in England and Wales) on processing ‘immediate detriment’ cases (see definition in section 3 of this guidance) in advance of a decision on the Government’s final approach to removing the age discrimination as found in the McCloud/Sargeant Employment Tribunal litigation.
- 1.2 The guidance is provided at the request of the Fire Brigades Union and for the purpose of assisting employers with “immediate detriment” cases. For that reason, it is only relevant to members of the Police and Fire Pension Schemes.
- 1.3 Further, it must be noted that the issues raised in this document are the subject of both ongoing litigation and the Government’s consultation. As such this guidance will be kept under review to ensure that it is consistent with any judgment or outcome from the consultation and will be amended to give effect to any such judgement or outcome.
- 1.4 In this guidance a reference to the “2015 scheme” is to the applicable reformed Police or Fire CARE Pension Scheme, and a reference to the “legacy scheme” is to the applicable Police or Fire Pension Scheme that applied to a member before 1 April 2015.
- 1.5 The term ‘pension authority’ refers to the appropriate Fire and Rescue Authority or Police Force.

2.0 Background to McCloud/Sargeant ruling

- 2.1 In 2015 most public service pension schemes, including the Firefighters’ Pension Scheme and Police Pension Scheme, were reformed. These reforms included ‘transitional protection’ for people closest to retirement.
- 2.2 In 2018, the Court of Appeal ruled that the transitional protection element of the 2015 public service pension reforms constituted unlawful age discrimination in the Firefighters’ and Judges’ Pension Schemes. The Government respects the Court’s decision and has confirmed that it will remove the difference in treatment across all main public service pension schemes, including the Police Pension Scheme.

- 2.3 The Government is currently consulting on proposals to remove this discrimination. Detail on the current proposals can be accessed here: <https://www.gov.uk/government/consultations/public-service-pension-schemes-consultation-changes-to-the-transitional-arrangements-to-the-2015-schemes>. The changes proposed in the consultation to remove the discrimination will apply across all the main public service pension schemes and provide members with a choice of which scheme they would like to be in for the remedy period. The remedy period is defined as between 1 April 2015 and 31 March 2022 in the consultation paper.
- 2.4 The remedy only applies to members 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.

3.0 What are ‘Immediate Detriment’ cases

- 3.1 For the purposes of this guidance, immediate detriment includes those scheme members 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, and who did not benefit from full protection and were moved into the 2015 Scheme on or after 1 April 2015:
- I. who become eligible to retire with an ordinary pension and want to have all their benefits paid from their legacy scheme (i.e. do not accept deferred 2015 scheme benefits); **OR**
 - II. who don’t qualify for lower-tier (and therefore higher-tier) ill-health pension under the single pot Ill-Health Retirement (IHR) arrangement BUT would do so under the IHR arrangements in their legacy scheme.
- 3.2 Any scheme members that fall within either of the two categories above can have their pensions calculated and put into payment according the guidance set out in section 5 below.
- 3.3 This guidance **should not** be applied to scheme members who have already retired and are in receipt of their pension payments. These cases are more complex to address, especially due to complexities in rectifying the member’s tax position.
- 3.4. It is important **to note** that ALL cases processed using this guidance will need to be revisited once the Government’s approach to removing the discrimination has been finalised, due to relevant matters that are currently subject to consultation, to include interest on contributions etc. This is likely to be after April 2022.

4.0 Guidance on treating immediate detriment cases

- 4.1 There are some transitional scheme members who have already been dismissed from work without a pension as they did not qualify for an ill-health pension under the 2015 Scheme. In addition, there are transitional members who are now

approaching retirement and want to take their full pension benefits under their legacy pension scheme. This guidance provides employers with advice on how these cases can now be processed in advance of final remedy implementation.

Transitional members who are already in receipt of a pension

- 4.2 There are cases (in respect of both ill-health/ordinary retirements) where transitional members have already retired and are currently receiving an ill-health/ordinary pension. It is recognised that many of these members' pensions are lower than they would be if they were paid under the member's legacy pension scheme. For example, where a transitional member has retired on ordinary grounds below age 55, their benefits accrued under the 2015 Scheme will currently be deferred until their State Pension Age.
- 4.3 These cases involve complex tax implications, employee/employer contribution adjustments etc. which still need to be resolved – these points are currently being consulted on and a final approach has yet to be confirmed. We will look to process these cases as a priority as soon as these outstanding points have been resolved.

5.0 Giving scheme members a choice

- 5.1 Scheme members falling under the scope of this guidance will effectively be given the opportunity to take all their pension benefits accrued between 1 April 2015 and 31 March 2022 under their legacy pension scheme, rather than take some benefits under the 2015 Scheme.
- 5.2 Pension authorities can now offer this choice to all those scheme members who:
- have transitioned into the 2015 Scheme who are approaching retirement; and
 - have retired due to poor health but who didn't qualify for an ill-health pension under the 2015 Scheme regulations but would qualify under their legacy scheme regulations.
- 5.3 In order to provide this choice, pension authorities will need to present two sets of pension entitlement quotes to each qualifying scheme member. Whilst not an exhaustive list, each quote should set out the main pension benefits that they would receive under each choice, to include: recurring annual pension (before and after commutation), commutation retirement lump sum entitlement, employee contributions owed/refunds due etc. Each scheme member should be required to provide written confirmation of their election.
- 5.4 There remain a number of outstanding issues that will not be resolved until such time that the Government finalises its approach to removing the discrimination identified by the McCloud/Sargeant ruling (see unresolved pensions issues section below). Each scheme member will need to agree to accept the Government's final approach and any future adjustments that this requires.

- 5.5 Once written confirmation has been received from each member, the pension authority can put the pension chosen into payment.

Unresolved pension issues:

- 5.6 As explained above, there remain outstanding issues that will not be resolved until the Government finalises its approach to removing the discrimination. The Government is currently consulting on its proposed approach and will finalise its proposals following careful consideration of stakeholder responses.

Recovery of outstanding employee contributions

- 5.7 Any scheme members who choose to take their full pension benefits under their legacy scheme will owe employee contributions or be entitled to a refund. Any employee contributions owed will need to be paid before the member's legacy scheme pension can be put into payment.
- 5.8 Any contributions owed will need to be based on the pay that is considered to be pensionable under the legacy scheme, which may vary from that pay which is considered pensionable under the 2015 Scheme. It will be for employing pension authorities to make an assessment for each member and seek payment. The member has a choice to pay any outstanding employee contributions from their retirement lump sum or from any other personal source. Any refunded employee contributions can be repaid to the member from the employer's local pension fund account.
- 5.9 A final decision has yet to be made in respect of whether, and at what rate, interest should be applied to contributions owed by employees should they elect to receive benefits from their legacy scheme during the remedy period (2015 to 2022). As the Government's approach to this issue has yet to be confirmed, this guidance proposes that interest is not applied to employee contributions owed at this time.
- 5.10 Notwithstanding this, any immediate detriment cases where the pension is put into payment now may need to be revisited if the Government's final approach includes the application of interest on owed employee contributions. Pension authorities should ensure that any members making a decision under this guidance are aware of, and accept, this condition.

Tax relief on employee contributions

- 5.11 Where possible, pension authorities should ensure that the employee contributions owed are repaid by the member before they leave service to ensure that any tax relief entitlement can be applied. Where this is not possible, for example where an individual has retired previously on ill-health grounds and did not qualify for a pension under the 2015 Scheme but would qualify under their legacy scheme, the

scheme member will have to wait until the Government's final approach to removing the discrimination has been implemented to receive any appropriate reimbursement. This is likely to be after April 2022.

Recovery of outstanding employer contributions (Firefighters' Pension Schemes only)

5.12 The Firefighters' Pension Schemes are in a unique position compared to other public sector pension schemes in that they do not have a uniform employer contribution rate across all schemes. As such, any scheme member who elects under this guidance to take their full pension benefits under their legacy scheme will impact on the corresponding employer contributions owed in respect of that member during the period that they were in the 2015 Scheme.

5.13 It will be for each employing Fire and Rescue Authority (FRA) to recalculate the contributions that they, as the employer, should have paid under the legacy scheme for each member and pay any shortfall into their pension fund account. Where this results in an excess of employer contributions having been paid, these can be refunded to the employer from their pension fund account.

Treatment of Cash Equivalent Transfer Value (CETV) transfers into the 2015 Scheme

5.14 It is recognised that there will be some transitional scheme members who will have transferred benefits from an external pension arrangement into the 2015 Scheme. Where a scheme member elects to take all their benefits from the legacy scheme, the original transfer-in (the Cash Equivalent Transfer Value) will need to be recalculated to determine the amount of pensionable service that should be purchased in the member's legacy scheme.

5.15 The recalculation of the transfer-in will need to be undertaken by pension authorities as if it had been taken at the time of the original transfer, using the actuarial factors that were applicable at that time.

5.16 Where conversion of transferred benefits from the 2015 Scheme to the legacy scheme results in the pension input amount changing due to actuarial adjustment, then an individual's Annual Allowance position may need to be reassessed.

Treatment of purchased added pension in the 2015 Scheme

5.17 Some transitional scheme members will have elected to make voluntary contributions to purchase 'additional pension' in the 2015 Scheme. For those members that elect to take their full benefits under the legacy scheme, any employee contributions paid in respect of the additional pension purchased will need to be converted to the equivalent value of additional pension that could have been purchased in the member's legacy scheme.

- 5.18 The legacy schemes do not currently have ‘additional pension’ provisions. Additional pension purchased in the 2015 Scheme is one of the unresolved issues that the consultation is considering.

Scheme PAYS– treatment of debits applied to 2015 Scheme pension

- 5.19 There may be instances where transitional members have previously incurred certain tax charges and have elected for these to be paid under Scheme PAYS with the associated pension debit applying to the 2015 Scheme benefits.
- 5.20 Where this is the case and the member elects for all their pension benefits to be paid from their legacy scheme, there may be subsequent changes to the tax charges retrospectively. If this is the case, pension authorities will need to recalculate the pension debit. The recalculation of the pension debit will need to be undertaken by pension authorities as if it had been taken at the time of the original Scheme PAYS elections, using the actuarial factors that were applicable at that time.

Revisiting AA tax assessments on previous years

- 5.21 Under current arrangements, there is a four-year statutory time limit for reassessing tax for previous years. This means that where a scheme member’s pension benefits change for past years, altering their tax position, HMRC can collect and refund tax where it is owed for the current tax year, and the four full tax years immediately preceding the point at which the individual’s benefits change.
- 5.22 Where a scheme member’s benefits change due to an election under this guidance so that additional tax is due for a tax year that sits outside the four previous tax years, HMRC cannot collect that additional tax. As such, the member will not be required to pay this. However, the recalculation will still be necessary to ensure the member’s tax position going forward is correct.
- 5.23 The Government has confirmed that where a scheme member’s benefits change so that they are owed a reimbursement of any tax charges paid since April 2015, they will get a full refund for the full period. The scheme member will initially be able to seek a tax refund from HMRC in respect of any overpaid tax charges in the previous four tax years.
- 5.24 Any further entitlement to a tax refund for years outside the four-year period will be refunded by means of compensation payments, which are expected to be paid after the Government finalises its approach to removing the discrimination, likely to be after April 2022.

Police Workforce and Professionalism Unit, Home Office

21 August 2020

DRAFT FOR COMMENT

Pensions Remedy Project Team

HM Treasury

2/Red 1 Horse Guards Road

London

SW1A 2HQ

Public Service Pension Schemes

Changes to the transitional arrangements of the 2015 schemes

Responses on behalf of Warwickshire Fire and Rescue Service

Question 1: Do you have any views about the implication of the proposals set out in this consultation for people with protected characteristics as defined in section 149 of the Equality Act 2010?

Response:

Choices over which is the best benefit is made more complicated by the fact that the 1992 scheme does not provide dependent benefits for unmarried partners. Is there any consideration to amending 1992 scheme rules to allow for this?

Question 2: Is there anything else you would like to add regarding the equalities impacts of the proposals set out in this consultation?

Response:

No response

Question 3: Please set out any comments on our proposed treatment of members who originally received tapered protection. In particular, please comment on any potential adverse impacts. Is there anything that could be done to mitigate any such impacts identified?

Response:

As per question 1, taper members who were previously members of the 1992 scheme, can provide dependent benefits for unmarried partners as part of the 2015 scheme. They can not in the 1992 scheme is the any consideration to change the 1992 scheme rules to allow for dependent benefits for unmarried partners.

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Question 4: Please set out any comments on our proposed treatment of anyone who did not respond to an immediate choice exercise, including those who originally had tapered protection.

Response:

The default option, to place members who do not respond, into the legacy scheme may not be beneficial for some members (particularly 2006 and dependents of 1992 scheme members) unmarried partners in the 1992 scheme are not entitled to dependents benefits. This could be challenged later. Should the default not be the most beneficial scheme for the member/dependent depending on status of the member, retired/deceased. DCU option would mitigate this.

Question 5: Please set out any comments on the proposals set out above for an immediate choice exercise.

Response:

What if information supplied to a member on which they based their decision is later found to be incorrect? Would there be any vires to allow a change of decision in these circumstances?

Members may choose the option that is not the most beneficial (based on correct assumptions) where should members go for advice and guidance? Administrators can provide information but are not financial advisors.

Question 6: Please set out any comments on the proposals set out above for a deferred choice underpin.

Response:

- Where members are making the choice when the benefit is due for payment on known benefit entitlements, there is more certainty and less chance of challenge later.
- How will the compensation where AA tax charges arise be calculated?

Question 7: Please set out any comments on the administrative impacts of both options

Response:

Immediate choice - This option would impact on administrators immediately and create a huge demand for information to be provided by members in a short time frame shortly after the legislation is passed. Software would need to be developed to cope with the change to the regulations and development of on-line calculators to allow members to produce their own forecasts would be needed.

If software is not developed in time for change this could mean administrators would need to calculate pension benefits manually, increasing the time it takes and the possibility of human error. This also creates delays in being able to deliver responses to members.

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Deferred choice underpin - this option allows administrators more time to deal with member requests for information, however, increases administrator workload over a longer period. It also creates complexities in dealing with collection of underpaid pension contributions and retrospectively adjusting tax for tax relief on contributions and tax charges where a member exceeds annual allowance.

Question 8: Which option, immediate choice or DCU, is preferable for removing the discrimination identified by the Courts, and why?

Response: DCU

- DCU allows administrators to spread the work, therefore more time to develop systems and procedures to cope with the additional workload.
- There is less risk with member decision making as they are not having to make a predictive choice. Therefore, reducing risk of future legal challenge.
- Fewer errors with a greater implementation period
- Longer term implementation may have a smoothing effect on cost

Question 9: Does the proposal to close legacy schemes and move all active members who are not already in the reformed schemes into their respective reformed scheme from 1 April 2022 ensure equal treatment from that date onwards?

Response:

Yes

Question 10: Please set out any comments on our proposed method of revisiting past cases.

Response:

- Death cases are extremely complex for members who had service in 1992 and 2015 schemes. If a member has died should the remedy option be given to a partner? Unmarried partners in 1992 scheme are not eligible for dependent benefits. There may be difficulties tracing dependents where no dependent benefit is in payment.
- Potential for challenge on death grant payments – where they are paid to representatives of the estate and not a partner
- Additional administration burden on the collection of overpayments and underpayments
- Additional administration burden on correcting the tax position for members going back over statutory 4- year time limit.

The Home Office Immediate Detriment Guidance would mitigate some of these issues

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Question 11: Please provide any comments on the proposals set out above to ensure that correct member contributions are paid, in schemes where they differ between legacy and reformed schemes.

Response:

- There is an additional administration burden for the calculation and collection of additional contributions and the refunding of any excess contributions. It would make sense to try and follow the process used in the 2006 Special member exercise on the collection of contributions, however claiming tax relief would need to be simplified.
- Under the DCU option, any balance of contributions owed could be collected from lump sum due upon retirement.
- Access to legacy System to enable calculation of over/underpayment of calculations, what are the requirements for the calculation is this on a year by year basis

Question 12: Please provide any comments on the proposed treatment of voluntary member contributions that individuals have already made.

Response:

Point A.16, allowing members to exceed the limit on purchase of additional AP, could lead to members to take up the option to purchase additional pension in the remedy period before regulations are changed, in order to benefit from this. Experience of members taking up the option to purchase additional pension is that it is rarely taken up by members as it is seen as too expensive, so the risk of this happening may be small.

Question 13: Please set out any comments on our proposed treatment of annual benefit statements.

Response: The proposed treatment of Annual Benefit Statements is acceptable, even though it would again increase administration burden having to show two sets of benefits based on different schemes. However, administrators are reliant on software providers making the necessary changes in time for 31 August deadline following the change in regulations, to be able to provide this information to members. This would not be achievable if we must do manual calculations.

Question 14: Please set out any comments on our proposed treatment of cases involving ill-health retirement.

Response: For immediate cases of ill-health where a member may have a terminal illness it would make sense to allow that member to make the decision at the time of their retirement and not have to wait. Changes to the exiting regulations should be made quicker for these cases.

Processing these cases based on the members choice of scheme, would reduce the stress and anxiety caused to members and potential for having to adjust benefits in payment.

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Question 15: Please set out any comments on our proposed treatment of cases where members have died since 1 April 2015.

Response:

Some of the complexities of these cases could be reduced if the provision of partner benefits was made equal across all schemes.

Question 16: Please set out any comments on our proposed treatment of individuals who would have acted differently had it not been for the discrimination identified by the Court.

Response:

Explicit guidance would be required as members choices on retirement dates and remaining in the scheme are going to be based on individual circumstance at the time they made the decision.

Question 17: If the DCU is taken forward, should the deferred choice be brought forward to the date of transfer for Club transfers?

Response:

Yes

Question 18: Where the receiving Club scheme is one of those schemes in scope, should members then receive a choice in each scheme or a single choice that covers both schemes?

Response:

A single choice that covers both schemes

Question 19: Please set out any comments on our proposed treatment of divorce cases.

Response: Agree the approach suggested

Question 20: Should interest be charged on amounts owed to schemes (such as member contributions) by members? If so, what rate would be appropriate?

Response: Interest should be charges at the same rate as that applied to the 2006 special members exercise

Question 21: Should interest be paid on amounts owed to members by schemes? If so, what rate would be appropriate?

Response: Interest did not form part of the payments made to members who were due arrears as part of the 2006 special members exercise, to pay interest on payments owed to members now would be inconsistent to that.

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Question 22: If interest is applied, should existing scheme interest rates be used (where they exist), or would a single, consistent rate across schemes be more appropriate?

Response:

A single consistent rate would seem appropriate.

Question 23: Please set out any comments on our proposed treatment of abatement.

Response: Abatement apply going forward but not retrospectively.

Question 24: Please set out any comments on the interaction of the proposals in this consultation with the tax system

Response:

In previous exercises where, retrospective changes have had to be made to the amount of tax due or tax relief applied, it has been difficult to co-ordinate and drawn out when members are claiming tax relief on an individual basis. This process would be far easier if it could be done on the members behalf by the administrator/payroll provider with a central contact at HMRC.



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

Consultation



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

Presented to Parliament by
the Chief Secretary to the Treasury
by Command of Her Majesty

July 2020



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ISBN 978-1-913635-37-4 PU2973

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Foreword

Public service pensions are some of the most generous pension schemes available in the UK, ensuring those who dedicate their working lives to public service are rewarded appropriately in retirement. When reforms to the main public service schemes were introduced in 2015 they had several objectives, including greater fairness between lower and higher earners, future sustainability and affordability. These objectives are just as important today as they were then.

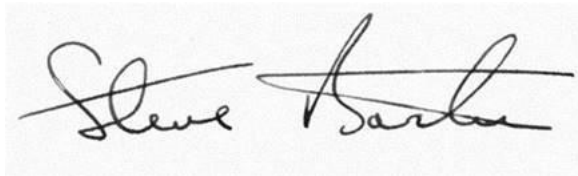
In negotiations with trade unions and staff associations, the Coalition Government agreed to exclude those closest to their retirement age from the reforms, as they had least time to prepare. This difference in treatment for certain members was later found to unlawfully discriminate, in particular against younger members. Since the Court's judgment, the government has been considering how best to address this discrimination. This consultation is the next phase of that work.

The reforms that were introduced in 2015 were progressive reforms and were in part intended to even out the value of pensions between some of the highest and lowest earners, resulting in some lower and middle earners being better off in the reformed schemes. Rather than just returning all members to the legacy schemes, I want to ensure that people who are better off in the reformed schemes can choose to keep those benefits. I also want to ensure that those who were closest to retirement age, and so were prevented from moving to the reformed schemes, will now have that choice.

The consultation explains how our two proposed options for removing the discrimination between scheme members would work. Under either option, the government would give eligible members a choice of which set of scheme benefits is better for them for the period 1 April 2015 to 31 March 2022.

This consultation also sets out proposals for moving all active members into the reformed schemes after this period. This government is committed to ensuring public service pension schemes reward public servants appropriately and are sustainable and affordable for taxpayers in the long term.

The issues we are facing here are complex and affect large numbers of people in different ways, so final decisions will need to take full and careful account of the views of all stakeholders. I therefore welcome views on the proposals in this document and, in particular, on the approaches outlined to give members a choice.

A handwritten signature in black ink, appearing to read 'Steve Barclay', is displayed on a light grey background.

RT HON STEVE BARCLAY MP

Chief Secretary to the Treasury

Executive summary

Removing discrimination arising from transitional protection

In April 2015 the public service pension schemes were reformed; the cost of the legacy schemes had significantly increased over the previous decades, with most of those costs falling to the taxpayer. The introduction of new schemes, with career average design and increased Normal Pension Ages and the introduction of a cost control mechanism, were important steps to protect against unsustainable increases in cost. They were also progressive, providing greater benefits to some lower paid workers. Even with these reforms, public service pensions continue to be among the very best available, rewarding those who dedicate their working lives to public service.

As part of the 2015 reforms, those within 10 years of retirement remained in their legacy pension schemes. This transitional protection was provided following negotiations with member representatives and was intended to protect and give certainty to people who were close to retirement. In December 2018 the Court of Appeal found that this part of the reforms unlawfully discriminated against younger members of the judicial and firefighters' pension schemes in particular, as transitional protection was only offered to older scheme members¹. The Courts required that this unlawful discrimination be remedied by the government. This document sets out the government's proposals for doing so.

The proposals set out within this consultation will apply to all members 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, across all affected public service schemes². This is irrespective of whether they have submitted a legal claim or not, or whether they are currently an active, deferred or pensioner member.

Depending on a person's circumstances, many scheme members are likely to be better off in the reformed schemes rather than the legacy schemes. The government believes it is therefore not fair to simply move everyone back into the legacy schemes, even though this would be sufficient to remove the unlawful discrimination identified by the Court of Appeal. The government therefore proposes to provide members with the option to choose between receiving legacy or reformed scheme benefits in respect of their service during the period between 1 April 2015 and 31 March 2022. This is referred to as the remedy period. This consultation seeks views on that proposal and especially on which of two possible

¹ The Court also made findings as to equal pay and indirect race discrimination.

² This includes the schemes covering the NHS in England and Wales, NHS Scotland, Teachers in England and Wales, Teachers in Scotland, Fire in England, Fire in Wales, Fire in Scotland, Police in England and Wales, Police in Scotland, Civil Service in Great Britain, UK Armed Forces, and the Civil Service (Others) scheme. Changes to the judicial pension schemes, the Local Government Pension Scheme in England and Wales, and the equivalent scheme in Scotland, as well as the public service pension schemes in Northern Ireland will be consulted on separately.

approaches should be taken to making this choice, and how each of these approaches might work. The two possible approaches are:

1. an immediate choice
2. a deferred choice underpin (DCU)

Both approaches would give members a choice whether to receive benefits from the legacy or reformed pension schemes in respect of their service during the period between 1 April 2015 and 31 March 2022. But they differ in the point in time at which the decision is made by the member.

Under the immediate choice exercise, members would make this decision in the year or two after the point of implementation in 2022. For many members, this will be some years prior to retirement, and at a time when there is still some uncertainty over the precise benefits that would accrue to them in the alternative schemes.

In contrast, under DCU, this decision would be deferred until the point at which a member retires (or when they take their pension benefits). Until that deferred choice is made, all members would be deemed to have accrued benefits in the legacy scheme, rather than the reformed scheme, for the remedy period.

Under either approach, those who have already retired and/or received a pension award will be asked to make their choice as soon as practicable after the changes are implemented. The position they choose would be applied retrospectively back to the date the award was made.

Both of these approaches would remove the discrimination that the court has identified. They have both been proposed in technical discussions that have been conducted with some scheme administrators and employer and member representatives. These have been helpful in identifying the relative advantages and disadvantages of each approach. There are extensive pros and cons to each option, with different impacts on different members. As set out in this consultation, there might in some cases be a need to adjust benefit payments, contributions and tax assessments with retrospective effect.

It is important to emphasise that all members will ultimately be treated as if they had belonged either to the relevant legacy scheme, or to the relevant reformed scheme, throughout the period between 1 April 2015 and 31 March 2022. There will be no obligation or entitlement to have the benefits or pay the contributions associated with one scheme in some respects, but with the other scheme in other respects. Nor will there be any provision for a "tapered" system under which some members might be entitled or required to treat part of that period as service in one scheme, and part of it as service in another.

Through this consultation, the government is seeking to explore and understand those differing impacts, potential mitigations, and other relevant issues, in order to ensure that the final policy solution has taken account of these matters. More details are set out in this consultation, through which the government is seeking stakeholders' views on the viability and desirability of both approaches.

Future pension provision

The options proposed to address the discrimination will enable members to choose between the legacy and reformed scheme benefits for the period between 1 April 2015 and 31 March 2022. The government is also seeking views in this consultation on the provision for public sector pension benefits after 31 March 2022.

The move in 2015 from (mostly) final salary to career average pension scheme design created a fairer system. Under a career average design, those public servants who see considerable increases in earnings over their career – and particularly towards the end of their career – are no longer likely to be relatively favoured compared with their colleagues who did not. Instead, 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.

Normal Pension Age in most of the reformed schemes is linked to the State Pension age. Increases in life expectancy have led to increases in the cost of pensions of all kinds. Aligning Normal Pension Age with the point at which members receive their State Pension reflects the fact that we are living longer and achieves a fairer balance between time spent in work and in retirement. Nobody is required to work longer if they do not wish to do so, but where pensions are accessed before Normal Pension Age, they are adjusted to reflect the fact that they are likely to be paid for longer.

For Great Britain, the total annual cost of paying out unfunded public service pension scheme benefits stood at £41.8 billion in 2018-19. Most of this cost is met by taxpayers. It is important that these costs are kept under control, to ensure the schemes are affordable and sustainable for the long-term. The introduction of the reformed schemes, with career average design and increased Normal Pension Ages, were important steps to protect against unsustainable increases in costs. The reformed schemes remain amongst the most generous schemes available in the UK.

The government therefore believes that the reformed schemes initially introduced in 2015 provide an appropriate level of public service pension provision. All public servants in scope of this consultation will be placed in these pension schemes in respect of employment from 1 April 2022 onwards. This consultation seeks views on that proposal.

Chapter 1

Introduction

Public service pension reform

- 1.1 In June 2010 the Coalition Government established the Independent Public Service Pensions Commission, chaired by Lord Hutton of Furness. The Commission was asked to undertake a fundamental structural review of public service pension provision.
- 1.2 The cost of providing public service pension schemes had increased significantly over the previous decades, with most of this increase falling to the taxpayer. At the same time, occupational pension provision in the private sector had changed significantly; employers were increasingly moving away from offering defined benefit pension schemes.
- 1.3 The Commission¹ found that the existing structure had been unable to respond flexibly to workforce and demographic changes that had occurred over the previous few decades. The Commission concluded that this had led to:
 - rising value of benefits due to increasing longevity
 - unequal treatment of members within the same profession
 - unfair sharing of costs between members, employers and taxpayers
 - barriers to increasing the range of providers of public services
- 1.4 The final salary design of schemes was criticised for creating unequal treatment of members within the same employment. The Commission argued that final salary schemes unfairly benefitted those receiving very significant career progression, often referred to as “highflyers”, as well as exposing taxpayers to a risk from higher than expected salary rises.
- 1.5 Lord Hutton considered that public service workers should be entitled to good quality, sustainable and fair defined benefit pension schemes. The Commission’s final report in March 2011 recommended moving public service scheme members to reformed schemes with benefits calculated on a CARE (Career Average Revalued Earnings) rather than final salary basis. To control against the risk of rising longevity, the Commission recommended

¹ Final Report:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/207720/hutton_final_100311.pdf

Interim Report: https://webarchive.nationalarchives.gov.uk/20130102175838/http://www.hm-treasury.gov.uk/d/hutton_pensionsinterim_071010.pdf

increasing the Normal Pension Age (NPA) to 60 for the uniformed services and to State Pension age for all other schemes.

- 1.6 As part of the reforms, the Commission recommended setting a cost ceiling. This would keep future costs under control by triggering steps to reduce generosity should the costs increase significantly. The intention was to increase schemes' resilience and ability to absorb shocks, as seen in the past few decades, and provide reassurance to taxpayers by imposing firm limits on the taxpayer cost of public service pensions.
- 1.7 The Coalition Government agreed that the Commission's recommendations would form the basis for consultation with member representatives and other interested parties. In November 2011 the Coalition Government set out its proposals for the scheme design and costs of the four largest public service schemes: the NHS Pension Scheme (England and Wales), the GB Civil Service Pension Scheme, the Teachers' Pension Scheme (England and Wales) and the Local Government Pension Scheme in England and Wales (Cm 8214, *Public service pension schemes: good pensions that last*). During negotiations with unions, the Coalition Government agreed to transitional protection for those closest to retirement, and a symmetrical cost control mechanism: i.e. that as well as protecting taxpayers where costs increased, members would see improvements to their benefits where costs decreased. In April 2015 reformed pension schemes were introduced under the Public Service Pensions Act 2013.
- 1.8 In line with wider changes to the use of price indexation in government, changes had also been made to the measure of inflation used to uprate pensions, from the Retail Prices Index to the Consumer Prices Index. Member contribution rates were also increased across the schemes (other than the armed forces²) by an average of 3.2% of pay.
- 1.9 The combined effect of all these changes was to reduce the forecast cost of public service pensions to the taxpayer by approximately £400 billion over 50 years. The change from final salary to career average design made schemes fairer for most workers on low and middle incomes. The change to NPA reflected improvements in life expectancy and the need to rebalance working lives with the average number of years spent in retirement. Higher NPAs act as an incentive to retire later than before, though the reformed schemes allow members to choose to retire earlier than their NPA. If they do, a fair adjustment is made to the benefits they receive to reflect the fact that they will be paid for longer.
- 1.10 The schemes were designed to ensure that members would have good pensions, which, at a minimum, met the target levels identified by Lord Turner's Pension Commission³ on the levels of income needed in retirement. Although some employee representatives campaigned against the reforms, the changes were beneficial to many members. Moving away from final salary-based pensions removed an inherent unfairness in scheme design where those receiving very considerable increases in pay could receive twice

² The Armed Forces Pension Schemes are non-contributory for members. If the pensionable pay of members of armed forces pension schemes is included, the average increase across all the main schemes was approximately 3% of overall pensionable pay.

³ Pensions: Challenges and Choices – The First Report of the Pensions Commission, 2004

as much from the schemes for each £1 they contributed than those with flatter careers. The reformed designs should provide many low and middle earners working a full career with pension benefits at least as good, if not better than under the previous arrangements.

- 1.11 The reformed schemes remain among the most generous available in the UK, and an important part of the remuneration of public service workers. Public service pension provision compares favourably with pension provision in the private sector, with typical employer pension contributions rates significantly higher in public service schemes than in private sector schemes.

Transitional arrangements litigation

- 1.12 Following negotiations with member representatives, the government agreed to exempt older members from the pension scheme changes. In most schemes this meant that members within 10 years of Normal Pension Age stayed in their existing schemes (known as “transitional protection”) and members between 10 and 13.5 or 14 years of Normal Pension Age could stay in their existing schemes for a period ranging from a few months to several years after 2015 (known as “tapered protection”⁴).
- 1.13 Several judges and firefighters made claims (known as the McCloud and Sargeant cases⁵) in the Employment Tribunals on the grounds that the transitional protection offered to older members constituted unjustified direct age discrimination and indirect race and sex discrimination. In particular, they argued that younger members were treated less favourably than older members who were given transitional protection. The Court of Appeal ruled in December 2018 that transitional protection in the judges’ and firefighters’ pension schemes gave rise to unlawful discrimination.
- 1.14 The government sought permission to appeal to the Supreme Court. This application was refused on 27 June 2019. In a written ministerial statement on 15 July 2019, the government confirmed that it accepted that the Court of Appeal’s judgment had implications for all schemes established under the Public Service Pensions Act 2013, as all those schemes had provided transitional protection arrangements for older members. The government confirmed that it would take steps to address the difference in treatment across all those schemes and in a subsequent written ministerial statement on 25 March 2020, that it would do this for all members with relevant service, not just those who had lodged a legal claim.
- 1.15 The judges’ and firefighters’ cases have been remitted to the Employment Tribunals to determine a remedy for claimants. Cases involving other schemes have also been brought. The government has agreed in a number of Employment Tribunal cases that claimants should be entitled to

⁴ All schemes have tapered protection except the Armed Forces Pension Scheme and Local Government Pension Scheme (which is outside of the scope of this consultation, apart from the issue of transfer between the LGPS and the other schemes (see paragraph A.57 below)). Tapered protection was usually for members who were from 10 to 13.5 years of their NPA on 1 April 2012, but for police and firefighters the period was between 10 and 14 years.

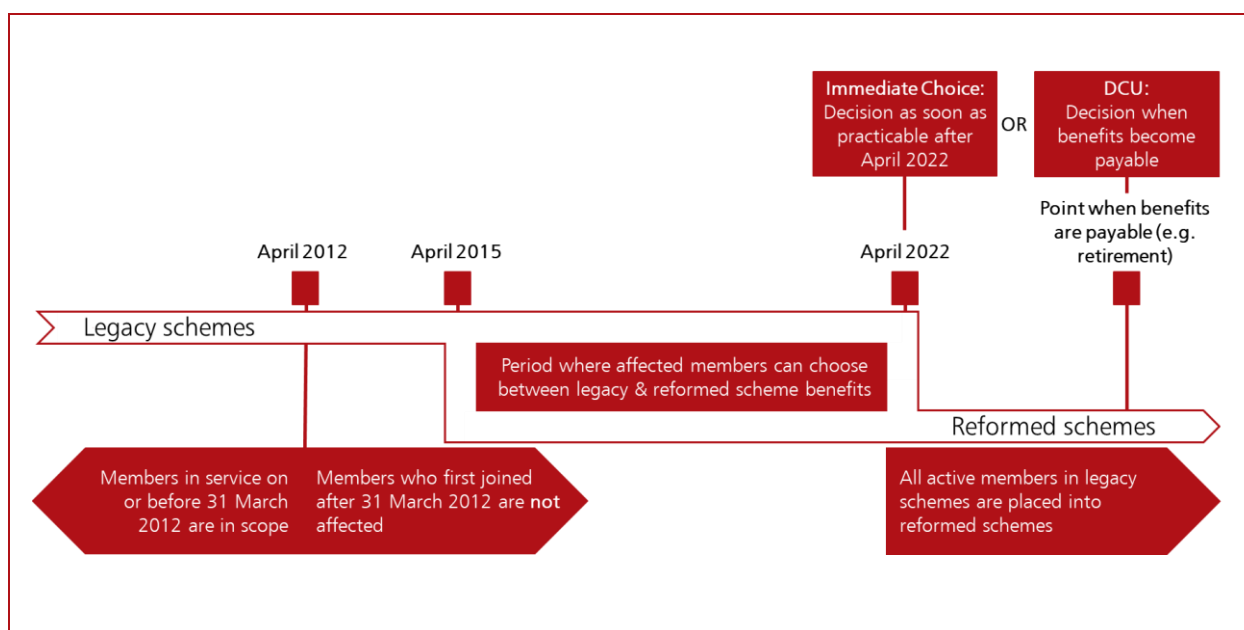
⁵ Lord Chancellor and another v McCloud and others, Secretary of State for the Home Department v Sargeant and others [2018] EWCA Civ 2844

membership of the appropriate legacy scheme. Claimants and non-claimants will be treated equally by having access to the same pension changes. This consultation sets out proposals to remove the discrimination for all affected members across the majority of the affected public service schemes.

Purpose of this consultation

- 1.16 The government proposes to introduce legislation: (a) to make changes to the schemes to remove the discrimination identified by the Courts for the period 1 April 2015 to 31 March 2022 (the remedy period); and, (b) to address future service beyond the remedy period.
- 1.17 In relation to the remedy period, simply extending the transitional arrangements to all eligible members - effectively placing them all back in their legacy schemes - could make many members worse off.
- 1.18 The government is therefore consulting on further changes that would ensure members can keep or choose benefits in the reformed schemes if they wish. This would mean those who did not have transitional protection (and so moved to the reformed schemes in 2015) could choose to keep those benefits they have accrued in the reformed schemes, and those who did have transitional protection (and so did not originally have access to the reformed schemes) can now choose to have such access.
- 1.19 Changes could require retrospective adjustments to individuals' pensions and to their member contributions. Where pension entitlements change this may also have tax consequences – these are outlined in the relevant sections of the consultation document, and explained in more detail in Annex B.
- 1.20 This consultation also sets out proposals for future service beyond the remedy period. The government remains of the view that the schemes established in 2015 currently represent an appropriate level of pension provision. To ensure that schemes remain appropriate and affordable while treating members equally for future service, all active members will be placed in the reformed schemes in respect of employment from 1 April 2022. At that point the transitional protection provisions would be removed, but the final salary link for members with service in the legacy schemes will be retained.

Figure 1: Diagram of the choice and pension reform process:



- 1.21 Earlier this year the government conducted technical discussions with scheme administrators and employer and member representatives to inform its proposals. These discussions were extremely helpful in informing the proposals contained in this document. The constructive engagement of all who participated is appreciated.

Scope

- 1.22 Around 3 million individuals are in scope of the changes relating to the removal of discrimination back to 2015. Of those, approximately 2 million will also be in scope of the changes to pension provision from 1 April 2022 onwards.
- 1.23 Under the proposed approach to removing the discrimination, all individuals in scope will be able to receive the benefits to which they are entitled, whether they have lodged a legal claim or not. It is important that changes are carefully considered, designed and implemented. It will take time to ensure this is done correctly. Most members will not draw benefits for some time and there is therefore time to implement changes before payments are due. The government will also ensure that the discrimination is addressed for those who receive a pension award before the changes are implemented, more details of which are set out in paragraphs 2.23-2.27. All relevant payments will be backdated where necessary.
- 1.24 This consultation relates to the main public service pension schemes the UK Government is responsible for (the Civil Service Pension Scheme for England, Wales, Scotland and home civil servants in Northern Ireland, the Teachers' Pension Schemes in England and Wales, the National Health Service Pension Schemes in England and Wales, the UK Armed Forces Pension Schemes, the Police Pension Schemes in England and Wales, and the Firefighters Pension Schemes in England). The Welsh Government is the responsible authority for the Firefighters Pension Scheme in Wales and the Scottish Government is the

responsible authority for the Teachers' Pension Schemes, the National Health Service Pension Schemes, the Police Pension Schemes and the Firefighters Pension Schemes in Scotland.

- 1.25 This consultation relates to the public service pension schemes in Scotland and Wales listed above in so far as there is a general need to address the discrimination identified by the Courts and in relation to pension provision from 1 April 2022 onwards. However, decisions regarding the details of how the discrimination identified by the Courts is addressed in those schemes are matters for Scottish and Welsh ministers.
- 1.26 Due to differences in the way transitional protection was provided in the Local Government Pension Scheme in England and Wales, and the equivalent scheme in Scotland⁶, there will be a separate consultation on changes for those schemes. The Ministry of Justice will also take forward a separate consultation on changes to the pension schemes for the judiciary, reflecting the unique situation of those schemes.
- 1.27 Public service pension schemes managed by the Northern Ireland Executive are established under separate legislation to those in Great Britain. They will therefore be subject to separate consultation.
- 1.28 It is envisaged that all schemes in scope will adopt broadly the same solution for removing the unlawful discrimination arising from transitional protection. However, it is likely that some elements will need to vary across schemes, reflecting differences in existing scheme design and characteristics. Details of these scheme specific elements will be subject to further public consultation on a scheme by scheme basis.

Legislation, implementation and timeline

- 1.29 It is the government's intention to bring forward new primary legislation as soon as practicable. This will provide for powers to make the necessary changes to schemes, to end the discrimination identified by the Courts, and to do so in a fair and non-discriminatory manner. By legislating in this way, the government's intention is to avoid any uncertainty or other problems which might otherwise result from relying simply upon whatever automatic effect the Equality Act 2010 may have, or from leaving it to courts or tribunals to make orders in particular cases. The new legislation is intended generally to take effect from April 2022, but will make provision for the whole of the period from 31 March 2015 onwards. This consultation explains how members would be treated at different times, in terms of their scheme membership.
- 1.30 The specific elements of future legislation, including the timelines for these, will be developed following the responses to proposals set out in this paper.

⁶ The equivalent local government scheme in Northern Ireland is subject to separate legislation and consideration from the schemes in Great Britain.

- 1.31 As set out above, amendments required to scheme regulations, in order to implement these proposals, will be the subject of further public consultation on a scheme by scheme basis.

Equalities impacts

- 1.32 When formulating policy proposals, the government is required to comply with the Public Sector Equality Duty in the Equality Act 2010⁷. The duty requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between people with different protected characteristics when carrying out their activities.
- 1.33 We would like to know your views as to whether any of the measures envisaged by this consultation might have any negative impacts relevant to the Public Sector Equality Duty⁸, or cause any other discrimination between different groups which ought to be avoided. There is evidence that some of the proposals may have differential impacts, but the government's current view is that these will not have a disproportionate or otherwise unjustified impact on individuals. These are set out in more detail in the Equalities Impact Assessment published alongside this document. We welcome your views on this, and on ways to mitigate any such impacts.

Question 1: Do you have any views about the implications of the proposals set out in this consultation for people with protected characteristics as defined in section 149 of the Equality Act 2010⁹? What evidence do you have on these matters? Is there anything that could be done to mitigate any impacts identified?

Question 2: Is there anything else you would like to add regarding the equalities impacts of the proposals set out in this consultation?

Interaction with Employment Tribunal proceedings

- 1.34 There are ongoing Employment Tribunal proceedings that concern a number of pension schemes and are to determine the remedy for the discrimination suffered by the claimants in these cases. The government's intention is that any action it takes to make changes to public service pension schemes will be consistent with any declaration of claimants' rights made by the Tribunals, although that will be kept under review as those proceedings progress. As set out in paragraph 2.3, the government believes that it is appropriate to allow all affected members to choose to access either legacy

⁷ <https://www.gov.uk/guidance/equality-act-2010-guidance>

⁸ https://www.equalityhumanrights.com/sites/default/files/meeting_the_duty_in_policy_and_decision-making.pdf

⁹ <https://www.legislation.gov.uk/ukpga/2010/15/section/149>

or reformed scheme benefits for the relevant period, and such a choice will go beyond any remedy that the Courts or Tribunals would be able to order.

- 1.35 The government's intention is therefore that the proposals in this consultation will apply both to those who have lodged legal claims and to those who have not, to ensure that they are treated in the same way. Members do not need to submit a legal claim to be covered by the proposals in this consultation. Both claimants and non-claimants will be given the opportunity to receive the pension benefits for the period 1 April 2015 to 31 March 2022 that they consider most valuable.

How to respond

- 1.36 This consultation will run for 12 weeks and will close at midnight on Sunday 11 October. Responses can be submitted by email to:
PensionsRemedyProjectConsultation@hmtreasury.gov.uk
- 1.37 Alternatively, please send responses by post to:
- Pensions Remedy Project Team
HM Treasury
2/Red
1 Horse Guards Road
London
SW1A 2HQ
- 1.38 When you are responding, please make it clear which questions you are responding to. Additionally, please indicate whether you are replying as an individual or submitting an official response on behalf of an organisation.

Processing of personal data and confidentiality

- 1.39 This notice sets out how HM Treasury will use your personal data for the purposes of the consultation on *Public Service Pension Schemes: changes to the transitional arrangements in the 2015 schemes* and explains your rights under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA).

Your data (Data Subject Categories)

- 1.40 The personal information relates to you as either a member of the public, parliamentarians, and representatives of organisations or companies.

The data we collect

- 1.41 Information may include your name, address, email address, job title, and employer, as well as your opinions. It is possible that you will volunteer additional identifying information about yourself or third parties.

Legal basis of processing

- 1.42 The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in HM Treasury. For the purpose of this consultation the task is consulting on departmental policies or proposals or obtaining opinion data in order to develop good, effective government policies.

Special categories data

- 1.43 Any of the categories of special category data may be processed if such data is volunteered by the respondent.

Legal basis for processing special category data

- 1.44 Where special category data is volunteered by you (the data subject), the legal basis relied upon for processing it is: the processing is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department.
- 1.45 This function is consulting on departmental policies or proposals, or obtaining opinion data, to develop good effective policies.

Purpose

- 1.46 The personal information is processed for the purpose of obtaining the opinions of members of the public and representatives of organisations and companies, about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

Who we share your responses with

- 1.47 Information provided in response to a consultation may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004 (EIR).
- 1.48 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.
- 1.49 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.
- 1.50 Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place.

- 1.51 Where information about respondents is not published, it may be shared with officials within other public bodies involved in this consultation process to assist us in developing the policies to which it relates. Examples of these public bodies appear at: <https://www.gov.uk/government/organisations>.
- 1.52 As the personal information is stored on our IT infrastructure, it will be accessible to our IT contractor, NTT. NTT will only process this data for our purposes and in fulfilment with the contractual obligations they have with us.

How long we will hold your data (Retention)

- 1.53 Personal information in responses to consultations will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.
- 1.54 Personal information in responses that is not published will be retained for three calendar years after the consultation has concluded.

Your Rights

- you have the right to request information about how your personal data are processed and to request a copy of that personal data
- you have the right to request that any inaccuracies in your personal data are rectified without delay
- you have the right to request that your personal data are erased if there is no longer a justification for them to be processed
- you have the right, in certain circumstances (for example, where accuracy is contested), to request that the processing of your personal data is restricted
- you have the right to object to the processing of your personal data where it is processed for direct marketing purposes
- you have the right to data portability, which allows your data to be copied or transferred from one IT environment to another

How to submit a Data Subject Access Request (DSAR)

- 1.55 To request access to personal data that HM Treasury holds about you, contact:

HM Treasury Data Protection Unit
G11 Orange
1 Horse Guards Road
London
SW1A 2HQ
dsar@hmtreasury.gov.uk

Complaints

- 1.56 If you have any concerns about the use of your personal data, please contact us via this mailbox: privacy@hmtreasury.gov.uk
- 1.57 If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, the UK's independent regulator for data protection. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
0303 123 1113
casework@ico.org.uk

- 1.58 Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the Courts.

Contact details

- 1.59 The data controller for any personal data collected as part of this consultation is HM Treasury, the contact details for which are:

HM Treasury
1 Horse Guards Road
London
SW1A 2HQ
London
020 7270 5000
public.enquiries@hmtreasury.gov.uk

- 1.60 The contact details for HM Treasury's Data Protection Officer (DPO) are:

The Data Protection Officer
Corporate Governance and Risk Assurance Team
Area 2/15
1 Horse Guards Road
London
SW1A 2HQ
London
privacy@hmtreasury.gov.uk

Chapter 2

Removing discrimination arising from transitional protection

Case for change

- 2.1 The legal cases that ruled that transitional protection was unlawful are known as the McCloud and Sargeant cases. Through these cases, the Courts identified unjustified age discrimination, in that entitlement to transitional protection was dependent on age. The Courts also identified indirect race and sex discrimination arising on the particular facts of those cases.
- 2.2 In order to remove this discrimination, the government must ensure equal treatment retrospectively back to 1 April 2015 and prospectively for the period until a fully equalised system takes effect.
- 2.3 The simplest way to achieve this would be to extend transitional protection to all members 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 would mean retrospectively moving all those who were originally ineligible for transitional protection back to their legacy schemes. While returning protected members to their legacy schemes would be consistent with the declarations issued by the Tribunals to date, it would be detrimental for a significant number of members who are likely to be better off in the reformed schemes. The government has therefore decided instead to ensure equal treatment by offering the relevant members a choice of which scheme benefits they want to have in respect of their service between 2015 and 2022.
- 2.4 While the legacy schemes are mainly based on final salary, and mostly have lower Normal Pension Ages (NPAs), the accrual rates are generally lower than in the equivalent reformed schemes. This means that pensions in the reformed schemes build up quicker than in the legacy schemes, despite being paid on an unreduced basis at later ages. Depending on the specifics of each scheme and individual circumstances, many members can therefore be better off in the reformed schemes, while others may be better off in the legacy schemes.
- 2.5 The government is clear that scheme members will be able to choose between reformed or legacy scheme benefits for the remedy period. Simply moving all unprotected members back to the legacy schemes for this period would not deliver this commitment and would be detrimental to those members who would be better off in the reformed schemes.

- 2.6 Similarly, there will be members who were originally protected and so remained in the legacy schemes, who will in fact be likely to be better off in the reformed schemes. Accordingly, those who were originally protected will also be offered the chance to be treated as if they had been in the reformed schemes in respect of their service between 2015 and 2022.
- 2.7 The below examples illustrate some situations whereby members may be better off in the reformed schemes. This is particularly the case for members without significant earnings growth in their career from 2015 onwards, or who choose to retire after their legacy scheme's NPA. Annex C contains further information on these examples and additional examples of alternative scenarios, including where some members may be better off in the legacy schemes. Ultimately, however, members will need to consider for themselves whether, having regard to their own personal circumstances and priorities, they would prefer to be in their legacy or reformed schemes in respect of their service between 2015 and 2022.

Example 1

A **nurse** who is a member of the **NHS Pension Scheme** (2015 scheme and 2008 section).

In **2012 they were 45**, and so **did not receive transitional protection**. However, they will now be given a **choice of pension for their service over the remedy period**, of either:

| Legacy scheme (2008 section) | or | Reformed scheme |
|----------------------------------------------------------------------------------------------------|----|---------------------------------------------------------------------------------------------------------------------------|
| 1/60 th of final salary each year Optional lump sum Payable unreduced from age 65 | | 1/54 th of revalued salary each year Optional lump sum Payable unreduced from State Pension age (age 67) |

If they had a **salary of £30,000 in 2015**, experience future annual **salary increases of 1% above inflation** and **retire at 65**, their choice with respect to the remedy period will be between the following pension amounts at retirement:

| Legacy scheme: | or | Reformed scheme: |
|----------------|----|------------------|
| £5,450 pa | | £6,040 pa |

Assuming they choose to not give up any pension for a lump sum and allowing for the reformed scheme benefits being reduced for early retirement.

This means they would likely be **better off receiving reformed scheme benefits**.

Example 2

A **teacher** who is a member of the **Teachers' Pension Scheme** (Normal Pension Age 60 section).

In **2012 they were 50**, and so **received transitional protection**. However, they will now be given a **choice of pension for their service over the remedy period**, of either:

| Legacy scheme (NPA 60) | or | Reformed scheme |
|------------------------------------------------------------------------------------------------------------------|----|---------------------------------------------------------------------------------------------------------------------------|
| 1/80 th of final salary each year Automatic lump sum (3x pension) Payable unreduced from age 60 | | 1/57 th of revalued salary each year Optional lump sum Payable unreduced from State Pension age (age 67) |

If they had a **salary of £40,000 in 2015**, experience future annual **salary increases of 2% above inflation** and **retire at their State Pension age (67)**, their choice with respect to the remedy period will be between the following pension amounts at retirement:

| Legacy scheme: | or | Reformed scheme: |
|-----------------------------------|----|-----------------------------------|
| £5,710 pa (+ £17,130 lump sum) | | £6,570 pa (+ £17,130 lump sum) |

Assuming, for ease of comparison, that under the reformed scheme benefits, they would choose to give up pension for a lump sum equivalent to that they would have automatically received under the legacy scheme.

This means they would likely be **better off receiving reformed scheme benefits**.

2.8 Aside from the value of the core member pension, there are other differences between the reformed and legacy schemes. These differ between schemes but may, for example, include some of the following:

- whether there is an automatic cash lump sum in addition to regular pension payments
- the age at which members can choose to retire with an unreduced pension (Normal Pension Age)
- member contribution rates
- qualification for ill health retirement
- entitlement to survivor benefits

2.9 Members will place different values on these differences in scheme design, depending on their personal circumstances. Some members are likely to attach greatest importance to the value of the core member pension, but others may favour particular elements of one of the schemes. For example, an individual with dependants may place more weight on survivor benefits than an individual with no immediate family. For some individuals there will also be differences in tax liabilities arising from membership of reformed or legacy schemes, which may impact those individuals' preferences.

2.10 For these reasons, it is not practicable or appropriate for scheme managers to decide on behalf of individual members which scheme they should be treated as having been in between 2015 and 2022. Only individual members

will be able to decide which benefits they value most. Both options set out in this consultation therefore give affected members a choice of which set of scheme benefits they want to receive for the period from 2015 to 2022: the set of benefits they had before 1 April 2015 (the legacy scheme), or the set of benefits as provided since 1 April 2015 by the reformed scheme established under the Public Service Pensions Act 2013.

- 2.11 The government is aware that some stakeholders have reservations about expecting members to make such a decision, rather than schemes making it on members' behalf. However, given the extent to which choices may depend on personal circumstances, future intentions and expectations and personal priorities, the government does not consider it would be right to make this decision for members. However, the government recognises the importance of ensuring that members are given appropriate information about the different options, the ways in which choosing one option rather than another may (at any rate at a general level) make a difference to members' positions, and how further advice might be obtained if required.

Remedy period

- 2.12 The issues being expressed by these proposals have existed since the reformed schemes were introduced on 1 April 2015. Under the proposals in this consultation document, the period for which members would be offered the choice of accruing benefits in the legacy or reformed schemes will start from 1 April 2015 and it is proposed that it will continue until 31 March 2022.
- 2.13 It is separately proposed that from 1 April 2022 all active members will be moved into the relevant reformed schemes, as set out in Chapter 3 below. 1 April is the first day of the new 'scheme year' and is when pensions changes are normally introduced. If, ultimately, the government decides to adopt the proposals set out in this consultation paper, the scheme year starting on 1 April 2022 is the earliest date by which the relevant legislation and administrative arrangements necessary to implement the present proposals (including the proposal that all active members would be moved into their relevant reformed scheme, as set out in Chapter 3) is expected to be in place.

Members in scope

- 2.14 The unlawful discrimination identified by the Courts was between those who were in service on 31 March 2012 and received full transitional protection and those who were in service then but did not receive full transitional protection because they were more than ten years from NPA. It is these groups that the government must now equalise treatment between. This applies equally to all those members, whether they are currently active, deferred or pensioner members.
- 2.15 As members who first joined their scheme after 31 March 2012 were ineligible for transitional protection regardless of their age, they were not subject to the discrimination identified by the court.

- 2.16 The purpose of the original transitional protection was to protect those closest to retirement and already in public service, and so with least time to prepare, from the changes (although the Courts decided that this did not justify the resulting discrimination).
- 2.17 This rationale did not apply to those who joined the schemes in the year commencing 1 April 2012 or in subsequent years after the Coalition Government's proposals had been made known in November 2011 (as set out in paragraph 3.10 below, there are practical reasons why significant changes to pension arrangements are generally made with effect from a date of 1 April). The proposed introduction of the reformed schemes was well publicised at the time and was the subject of widespread media coverage. Anyone joining after 31 March 2012 would, therefore, reasonably be expected to have known that they would join or be moved to the reformed schemes. They could not reasonably have expected to remain in, or join, the legacy schemes, and nor were they subject to the unlawful discrimination identified by the Court of Appeal because transitional protection was not available to anyone who joined after 31 March 2012. Therefore, it is not appropriate to extend to them the same choice of scheme membership in respect of their service between 2015 and 2022 as will apply to those who were already in service at 31 March 2012. To do so would also increase the administrative workload and financial cost of these proposals. Consequently, such persons are not within scope of the proposals set out in this document.
- 2.18 Individuals who were in service on or before 31 March 2012 but subsequently left and re-joined will be in scope of these proposals, provided their break in service meets the criteria for continuous service set out in their scheme regulations and was less than five years.

Taper protected members

- 2.19 In addition to full transitional protection, a number of schemes included tapered protection. In most schemes this applied to those between ten and either thirteen and a half or fourteen years from NPA on 31 March 2012, depending on scheme. These individuals were able to remain in the legacy schemes for longer than those who were completely unprotected, before moving to the reformed schemes. This was on a sliding scale; those taper protected members closest to NPA in 2012 stayed in the legacy schemes longer than those further from NPA.
- 2.20 The effect of the judgment in the McCloud case is that this tapered protection was discriminatory, and that this discrimination was unlawful. Maintaining an age-based system of tapered protection, or extending it to all members in scope of this consultation, would therefore be perpetuating or indeed extending such discrimination. It would also be extremely complex to administer in the context of a choice-based system. As a result, under either of the main options set out here for consultation, all members, whether originally fully protected, taper protected or unprotected, will be able to choose legacy scheme benefits or reformed scheme benefits for the whole remedy period. They will not be given the choice to have legacy benefits for

some of the period and reformed benefits for the rest. The choice now to be made available will be beneficial for the majority of taper protected members. Requiring that choice to be exercised for the entirety of the remedy period is necessary to ensure that the remedy is implemented fairly for all members.

- 2.21 It is possible that for a small number of individuals tapered protection may, have been more advantageous than the choice of receiving either reformed or legacy scheme benefits for the entire remedy period.
- 2.22 However, any such advantage will have arisen by chance, in the sense that it is not something which the system of tapered protection deliberately set out to produce, and it would have been as a result of a policy that has been identified by the Courts as giving rise to unjustified discrimination. Alternative options have been considered to test whether it would be possible to construct a system of tapered protection that was not age based. However, even if this was possible, any such system would be extremely complex both for members and administrators and would likely involve members having to make a much more convoluted choice than that required either by the immediate choice exercise or by the DCU. Further, since it would by definition be a different system, it would not necessarily leave members in the same position as under the original age-based taper in any case.

Question 3: Please set out any comments on our proposed treatment of members who originally received tapered protection. In particular, please comment on any potential adverse impacts. Is there anything that could be done to mitigate any such impacts identified?

Members who retire or receive pension benefits before the consultation changes are implemented

- 2.23 Generally speaking, members in scope will not be asked to make their choice between benefits until some point in the period after 1 April 2022 (under the immediate choice option), or at a later date when they come to retire and receive benefits (under the DCU option). Some affected members have already retired with a pension in payment, or will do before the changes in this consultation are implemented. Everyone in this position will ultimately receive a choice of service in their legacy or reformed scheme for the period between 1 April 2015 and the date of their pension award.
- 2.24 Members who have already retired and received a pension award, from either their legacy or reformed scheme, will be given this choice as soon as practicable once the legislative changes are implemented. Any revised award will be backdated to the date their pension award was made. Members of the legacy schemes who retire between now and the implementation of the changes will be treated in the same way.

- 2.25 The government accepts that members of the reformed schemes affected by the unlawful discrimination identified by the Courts, 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 seek to give these members of the reformed schemes who were not originally protected and who retire between now and 2022 that choice at retirement, where this is administratively possible. In particular, the government will work with schemes to seek to offer reformed scheme members undergoing ill health retirement a choice of legacy or reformed scheme benefits at retirement, subject to them meeting the criteria for payment of benefits under each scheme. However, this is administratively complex and will require systems changes. Where it is not possible to offer this choice to members at the point their award is made they will be given this choice as soon as practicable once the legislative changes are implemented and again any revised award will be backdated to the date the member's pension award was made.
- 2.26 As set out in more detail in Annex A, it is important to note that, where members choose to change scheme, they may in some cases have to repay benefits that they have already received. Where this is so, or payment of additional contributions will be required, this will be made clear to members when making their choice.
- 2.27 If the benefits a member has received change, then tax adjustments may be required. The tax rules will apply to the facts of an individual's updated situation.

Options

- 2.28 The government is in particular seeking views on two options through this consultation: an immediate choice exercise and a deferred choice underpin (DCU).
- 2.29 Both options would involve members having the choice between their legacy and reformed scheme benefits for their service in the remedy period, but for the majority of members the choice would be made at different times under the two options.
- 2.30 Under the immediate choice option, most members would decide which benefits to take in the years after the point of implementation (i.e. 2022).
- 2.31 In contrast, under DCU for the majority of members the decision about which benefits to take would be deferred until the point at which they take their pension benefits¹.
- 2.32 As set out in paragraph 2.25, under either option, some members who take pensions benefits before 1 April 2022 may be asked to make their decision sooner.

¹ For Armed Forces Pension Scheme members, a payment under the Early Departure Payments scheme, and entitlement to a redundancy payment under the MOD's armed forces redundancy compensation schemes would trigger the choice.

- 2.33 Under both options, the choice would be between accruing service in the legacy scheme and accruing service in the reformed scheme. Members would therefore have to choose between all the benefits in the legacy scheme or all of the benefits in the reformed scheme; they could not seek to be a member of both schemes, or to have a combination of legacy and reformed scheme benefits with respect to the remedy period.
- 2.34 An immediate choice would satisfy the need to give members the choice between legacy and reformed scheme benefits. It would provide relative certainty for the majority of members at a much earlier stage. However, members would have to make a decision based on assumptions around factors such as their future earnings and career paths, their family circumstances now and in future, and when they expect to retire. For some, this would involve making assumptions over what might happen over a period of many decades. There is therefore a chance that some members would choose to accrue service in a scheme which does not ultimately turn out to be the most beneficial for them. Members already make assumptions about their futures when making decisions about existing elements of their pensions. For example, when deciding when to retire and whether or not to take a lump sum in return for reduced annual pensions, or how much lump sum to take, members may make assumptions around future life expectancy, which may prove incorrect.
- 2.35 The deferred choice underpin would also give members the choice between legacy and reformed scheme benefits. By delaying the decision until the point at which benefits are awarded, the DCU would reduce the reliance on forecasts and assumptions, and therefore the possibility of members making what might turn out to be the wrong choice. Making the decision when benefits are awarded (for most members, the point of retirement) would mean they could be based on known benefit entitlements late in, or at the end of, a career rather than assumptions about their future career. This option does, however, mean the majority of members would have less certainty about the benefits they would ultimately receive until they take those benefits (although they would know their benefits would be at least as good for them personally as they already expect). DCU would also be more challenging than immediate choice to design and administer longer term.
- 2.36 The next two sections set out in more detail how the immediate choice and DCU options might work.

Immediate choice

- 2.37 Under this option members would make an irrevocable decision as to whether to accrue benefits in their legacy or reformed pension scheme for the remedy period. For most members this choice would be made in the period after the end of the remedy period. It may be made earlier for some of those who take a pension award before 2022.
- 2.38 Members would be given a reasonable amount of time to make the relevant choice – probably 12 months from the date they are first contacted. Throughout that period, schemes would make multiple efforts to contact

members who had not yet responded, for example at 3, 6, 9 and 12 months. Any member who did not respond in this timeframe would be deemed to have chosen to accrue benefits in their existing scheme. For members who were originally transitionally protected this would be the legacy scheme. For those who did not receive transitional protection, this would be the reformed scheme. This “default” position would avoid the possibility of changing the benefits that members are currently entitled to without their express consent.

2.39 As set out in paragraph 2.20 above, members who originally had tapered protection would be required to choose between their legacy scheme benefits and the reformed scheme benefits. They could not have a combination of the two. There is a question as to what the default option should be for members who originally received tapered protection but did not respond to the immediate choice exercise. An option would be to deem them to have accrued benefits in their reformed scheme for the whole remedy period, as that is the scheme they would currently be in (all having tapered by the point of implementation after 2022). Alternatively, however, they could be deemed to have accrued benefits in their legacy scheme for the remedy period. Under either option, it is possible that some members who do not respond may be placed in the scheme that is not the most beneficial for them for the remedy period. This will be dependent on individual circumstances.

2.40 It may be clearer in some schemes that a large proportion of members who did not have transitional protection would be financially better off moving back to the relevant legacy scheme. It is therefore possible that a different “default” option could be chosen for the members of those schemes, including taper protected members, where no response to the choice exercise was received. This is something relevant schemes could consult on directly with their stakeholders following the government’s response to this consultation.

Question 4: Please set out any comments on our proposed treatment of anyone who did not respond to an immediate choice exercise, including those who originally had tapered protection.

2.41 While scheme managers could not provide forecasts of exactly what each member would receive in the future from either scheme, and could not advise members on which was the “best” choice for them, they would be able to provide some information on the different benefits available under each scheme and to make available tools such as online calculators and models for members to use. These tools could allow members to input assumptions for variables such as future earnings, prices or earnings indexation, expected retirement age, their longevity and possible survivor benefits, to see what benefits they might expect to receive from the different schemes in each scenario on the basis of those assumptions. Ultimately though, these could only be projections based on particular assumptions.

Members would need to take their own decision as to which scheme best reflects their personal circumstance and priorities.

- 2.42 The examples below show some of the ways in which assumptions an individual makes could affect which scheme is ultimately better for them.

Example 1 revisited

Example 1 considered a **nurse** who is a member of the **NHS Pension Scheme** (2015 scheme and 2008 section), who if they were to retire at age 65 would choose between the following pension amounts with respect to the remedy period at retirement:

| | | |
|-----------------------------|----|-------------------------------|
| Legacy scheme: £5,450 pa | or | Reformed scheme: £6,040 pa |
|-----------------------------|----|-------------------------------|

If the same nurse as set out in example 1, gets promoted twice, receiving **an additional 10% salary increase** at the end of the remedy period **and an additional 5% salary increase** five years later, their choice if retiring at age 65 now becomes, either:

| | | |
|-----------------------------|----|-------------------------------|
| Legacy scheme: £6,270 pa | or | Reformed scheme: £6,040 pa |
|-----------------------------|----|-------------------------------|

This means they would likely be **better off receiving legacy scheme benefits**. Therefore, for this hypothetical member a change in future career progression has changed which scheme is expected to be more beneficial.

Example 2 revisited

Example 2 considered a **teacher** who is a member of the **Teachers' Pension Scheme** (Normal Pension Age 60 section), who if they were to retire at their State Pension age (67) would choose between the following pension amounts with respect to the remedy period at retirement:

| | | |
|-----------------------------------------------------|----|-------------------------------------------------------|
| Legacy scheme: £5,710 pa (+ £17,130 lump sum) | or | Reformed scheme: £6,570 pa (+ £17,130 lump sum) |
|-----------------------------------------------------|----|-------------------------------------------------------|

If the same teacher as set out in example 2 **chose to retire aged 60** instead, then their final salary would be lower and the reformed scheme benefits would be reduced for early retirement. Their choice is now:

| | | |
|-----------------------------------------------------|----|-------------------------------------------------------|
| Legacy scheme: £4,340 pa (+ £13,020 lump sum) | or | Reformed scheme: £3,490 pa (+ £13,020 lump sum) |
|-----------------------------------------------------|----|-------------------------------------------------------|

This means they would likely be **better off receiving legacy scheme benefits**. Therefore, for this hypothetical member a change in retirement age has changed which scheme is expected to be more beneficial.

- 2.43 Because legacy and reformed schemes have different accrual rates, for a small minority of members their decision to take different benefits for the remedy period than they have accrued hitherto could have tax implications. This is set out in more detail at Annex B. There is a usual 4-year statutory time limit for reassessing tax for previous years. Therefore in cases where a

change in benefits means an individual owes more in tax, they must pay this additional tax to HMRC for any years of the remedy period within the current tax year and the 4 full tax years preceding the point at which the choice is made. But where a change in benefits means an individual is owed money because their tax liability is lower, the government will refund the equivalent of the excess tax paid with respect to all years of the remedy period. Individuals affected will need to reassess their tax positions for each individual year of the remedy period. Any changes that impact an individual's tax position within the statutory time limit will need to be reported to HMRC. Individuals may also need evidence of their tax position for earlier years to help them access the appropriate compensation.

- 2.44 The main advantage of an immediate choice is that it should resolve the issue within a few years and thereby gives all members clarity over scheme membership for the remedy period relatively quickly. Although the choice exercise would take some years to implement, members would be clear about which scheme they were accruing benefits in during the remedy period as soon as their choice was received by the scheme administrator.

Deferred choice underpin (DCU)

- 2.45 Under the DCU, eligible members would, in the first instance, be deemed to have been accruing benefits in their legacy scheme for the remedy period, regardless of whether they originally had transitional protection or not. When those members are entitled to receive pension benefits under either their legacy or reformed scheme design (e.g. on retirement), they would then be offered a choice of which set of benefits they wished to receive for the remedy period². In technical terms, individuals would remain members of the legacy scheme, but if they opted for reformed scheme benefits, they would be paid those benefits within the legacy scheme, by means of a 'statutory underpin'. Because this would be done at the point benefits would be payable, the choice would be based on known benefit entitlements provided by the two schemes, rather than assumptions about what those entitlements might be. This would mean that members should be clearer as to what they would get under each option and so could more easily choose whichever is better for them.
- 2.46 This option would mean that in 2022 eligible members would be returned to their legacy scheme for the remedy period in the first instance. It would also ensure that those who ultimately are better off in the reformed schemes could still access their reformed scheme benefits at the point they are entitled to receive those benefits. Asking members to make their decision knowing what they could receive from each scheme at the point benefits are taken may make their decision easier. However, there would still be some uncertainties. For example, it would not be known how long payments will be made for, which will be relevant where one scheme provides a higher member pension but the other provides a higher survivor pension.

² Although benefits could not be brought into payment under a particular scheme design unless the member had reached the Minimum Pension Age for taking benefits under that particular scheme design.

- 2.47 Delaying the decision until the point benefits are payable or awarded in other ways does mean that some members would not have certainty over which scheme benefits they would receive in relation to service during the remedy period, potentially for a considerable period of time. This could be mitigated to some extent by the fact that their annual benefit statements would reflect both legacy and reformed scheme benefits. However, it would also be more complicated for schemes to administer the DCU. They would need to capture and retain additional data on entitlements under both options and operate this solution over a much longer timeframe, until all members in scope (or their dependants) were receiving pensions. These administrative and practical complexities are set out in the section on “Administration” below and in more detail in Annex A.
- 2.48 For annual allowance tax liabilities, only the small minority of individuals with sufficient income and/or pension accrual to generate an annual allowance charge could be affected. Under the DCU option, there are two points at which an individual’s scheme benefits could change. This may trigger an adjustment in their annual allowance tax charge, if the individual has sufficient pension accrual. More details on this and other potential tax charges are set out in Annex B.
- 2.49 First, at the end of the remedy period, pension accrual may change when members will be deemed to have been members of their legacy scheme for the remedy years. For those individuals who were originally protected in 2015, and consequently have accrued legacy scheme benefits since then, their pension benefits are unchanged and therefore no annual allowance adjustment will be required. But for unprotected members, being deemed to have been members of their legacy scheme will retrospectively alter the pension benefits they have accrued over the remedy period.
- 2.50 In line with the usual 4-year statutory time limit for reassessing tax, where this change in scheme membership means an individual owes more in tax, they must pay it for accrual increases arising in the current tax year and the previous 4 full tax years. So if scheme members are moved back into their legacy schemes on 1 April 2022, they must pay tax owed on accrual increases arising since 6 April 2017. But where a decrease in benefits accrued means an individual is owed money because their tax liability is lower, the government will refund the equivalent of the excess tax paid with respect to all years of the remedy period. Individuals affected will need to reassess their tax positions for each individual year of the remedy period, and any changes within the statutory time limit will need to be reported to HMRC. Individuals may also need evidence of their tax position for earlier years to help them access the appropriate compensation.
- 2.51 Second, at the point when an individual draws their benefits (usually at retirement), if they choose to receive reformed scheme benefits rather than legacy scheme benefits for the remedy period, this could trigger an annual allowance charge. Because of the sudden change in pension accrual at that point, the charge triggered is likely to be greater than the annual allowance charges that individual would have faced had they accrued the same reformed scheme benefits for the remedy period throughout their career. As the higher charge is a direct consequence of the way the DCU option has

been designed, the government considers that it would be unfair to expect individuals to pay the full charge. The government will therefore compensate individuals for the difference in their annual allowance charge liability arising from the decision to take reformed rather than legacy scheme benefits for the remedy period. This will apply to the year in which individuals take their pension benefits.

- 2.52 While members would have more uncertainty over their scheme arrangements for longer, the main advantage of the DCU is that members would be able to make their decision with fuller information about what they would receive under each scheme. They are therefore less likely to choose the scheme that ultimately is not the best one for them.

Administration

- 2.53 Both options represent an administrative challenge given the size of membership and the number of members who could change schemes. The administration of immediate choice would be resource intensive and time pressured in the shorter term. For the DCU, considerable work would be required in the short term to move many members of the reformed schemes back to their legacy schemes; and although the rest of the administrative impact of the DCU would be smoothed over decades, that would also mean maintaining the new systems for much longer. Therefore, a number of issues associated with both options need to be carefully considered.
- 2.54 During the period when these changes would have to be implemented, schemes will also be dealing with a number of other tasks going beyond the more routine but nevertheless important aspects of pensions administration. These include preparing for and completing scheme valuations; implementation of a long-term solution to Guaranteed Minimum Pension equalisation; and the introduction of the pensions dashboard.
- 2.55 To deliver the immediate choice option, schemes would have to develop online resources including benefit calculators for members to use to inform their decision. They would also have to contact around 3 million people and process their decisions in a relatively short period of time after 1 April 2022. That would include a considerable number of deferred members or members who have been awarded pensions in payment since April 2015, most of whom will no longer be employed by scheme employers and some of whom may be difficult to trace. The requirement to change IT systems, including developing software quickly, could increase the risk of error and impact delivery. This option is also likely to incur greater administrative costs in the short term.
- 2.56 The DCU proposal presents slightly different issues; the volume of changes needing to be made would be spread over a much greater time period (although there would be a need under either option to resolve cases of members who have retired or died since April 2015). This means schemes would have longer to process the majority of cases and could build software to do it for them, minimising the amount of manual work required before an automated solution was in place.

- 2.57 The complexities of the DCU, however, are greater. Scheme administrators would probably need to run two sets of benefit designs alongside one another for over 30 years. 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 would be calculating benefit accrual over the period from 2015 to 2022 on the basis of two benefit designs instead of one. While the overall risk of error might be slightly reduced due to the longer timeframe for implementation, it could increase in the long term if there were problems in retaining knowledge of the special features of benefit design for the 2015-2022 period in future decades.

Table 2.A: High level summary of immediate choice & DCU

The following is a high-level summary of the main features of the two remedy options, but which is preferable might also depend on other features as set out in the remainder of the consultation document.

| | Immediate choice | Deferred choice underpin |
|---------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Remedy Period | • 1 April 2015 – 31 March 2022 | • 1 April 2015 – 31 March 2022 |
| When would members make their choice? | • Irrevocable choice made as soon as practicable after 31 March 2022. | <ul style="list-style-type: none"> • Irrevocable choice made when a pension award becomes payable (usually when the member retires). • Until then, members would be deemed to have been in their legacy scheme for the remedy period. |
| What information would be provided? | <ul style="list-style-type: none"> • Decision based on assumptions, for most. • Schemes would provide information and online calculators to assist members in forecasting their pension entitlement under both schemes. | <ul style="list-style-type: none"> • Decision based on known member entitlements. • Schemes would provide direct comparisons of actual entitlements under both schemes. |
| Benefits to members | • Addresses the issue relatively promptly, giving certainty to members as to their pension arrangements for the remedy period. | • Ensures members can make their decision based on actual entitlement to benefits rather than having to do it based on assumptions. |
| Potential downsides for members | • Decision based on assumptions, so some may choose the scheme that does not turn out to be most beneficial for them. | <ul style="list-style-type: none"> • Takes longer to resolve the issue so relative uncertainty over pension arrangements until members retire. • Some technical elements may be more complex to explain |

| | | |
|-------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | and resolve – see Annexes A and B. |
| Tax treatment and compensation, where relevant | <ul style="list-style-type: none"> • A member's tax position would be corrected within the statutory time limit to reflect their choice of benefits. • Where they owe tax, this would be recouped for the 4 tax years before their decision point. Where they have overpaid tax, the government will repay this without a time limit. | <ul style="list-style-type: none"> • Non-transitionally protected members' tax will be corrected, within the statutory time limits, in 2022 when they are deemed to have been in the legacy scheme. • Where tax is owed, this would be recouped for the 4 tax years before an individual's scheme benefits change. Where members have overpaid tax, the government will repay this without a time limit. • Where a member chooses reformed scheme benefits at the point of retirement, their tax position will be reassessed again. Where an AA tax charge arises from the choice, the scheme will compensate members for the charge. |

Question 5: Please set out any comments on the proposals set out above for an immediate choice exercise.

Question 6: Please set out any comments on the proposals set out above for a deferred choice underpin.

Question 7: Please set out any comments on the administrative impacts of both options

Question 8: Which option, immediate choice or DCU, is preferable for removing the discrimination identified by the Courts, and why?

Costs

2.58 The government currently 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. This reflects the expected cost of members receiving benefits from whichever scheme provides the highest value to them for the remedy period. These costs are in addition to those already arising from members receiving benefits from the scheme they are currently in. These cost estimates are based on 2016 valuation data and assumptions and

are provided to give a broad indication of the financial impact. Some of the methodology and assumptions needed to estimate the costs have been refined and updated since previous published estimates. When the costs are measured in the valuation and financial accounting processes, they may differ from the costs set out above as they are highly dependent on the approach and assumptions adopted.

- 2.59 The costs of removing the discrimination will feed into future employer contribution rates once the 2020 scheme valuations are completed. This measure of the costs will be based on the data and assumptions used in the 2020 valuations and is therefore likely to differ from the costs above. It is only one of many factors that could impact employer contribution rates in the next valuations.
- 2.60 The cost control mechanism introduced as part of the 2015 reforms was paused in February 2019 given the uncertainty arising from the Court's judgment. The government has also made announcements on the cost control mechanism, and published a separate update.

Chapter 3

Future pension provision

The 2015 schemes

- 3.1 The schemes established under the Public Service Pensions Act 2013 and introduced on 1 April 2015 were based on the recommendations of the Independent Public Service Pensions Commission. They were accepted by the majority of trade unions and other member representatives at the time. Whilst the Courts have found that transitional protection arrangements negotiated as part of their implementation gave rise to unlawful discrimination, the objectives and validity of the reformed schemes themselves have not changed or been affected.
- 3.2 These pension 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 appropriate pension provision for public service workers.

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.

Controlling costs

- 3.5 For Great Britain, the total annual cost of paying out unfunded public service pension scheme benefits stood at £41.8 billion in 2018-19. Most of this cost is met by the taxpayer.
- 3.6 It is important that these costs are kept under control, to ensure the schemes are affordable and sustainable for the long-term. The introduction of reformed schemes with career average design, and Normal Pension Ages linked to State Pension age for most schemes, were important steps to protect against unsustainable increases in costs.

Closing the legacy schemes for all members and equalising future treatment

- 3.7 The government believes that the reformed schemes introduced in 2015 provide an appropriate level of pension provision. Public servants who first joined after 31 March 2012 are already members of such schemes. The government proposes to place all active members who joined before 1 April 2012, who are not already members of reformed schemes, into their respective reformed schemes from 1 April 2022, ensuring the equal treatment of all members. This means bringing forward primary legislation to remove the transitional protection provisions and close legacy schemes completely for future service, for all members, from 1 April 2022. This would ensure that all active members are treated equally in respect of the pension scheme designs offered for future service and are all in the reformed schemes from this date. It would be unfair for some members, and not others, to be in the legacy scheme beyond this date.
- 3.8 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.
- 3.9 The government proposes to close the legacy schemes on 31 March 2022, and from 1 April 2022, all those in service would become members of the reformed schemes. 2022 is the earliest point at which the necessary primary legislation and administrative arrangements to implement these changes are likely to be in place. 1 April is the normal date on which pensions changes are implemented.
- 3.10 Changes to public service pension schemes have been introduced on the first day of the financial year for many decades. Introducing changes at the start of the financial year means that pension benefits are aligned with scheme accounting years and actuarial valuation periods. Taking 1 April 2022 as the date allows sufficient time for government to consult on the proposals and, subject to decisions taken following the consultation, introduce the

necessary legislation. Members of the legacy schemes will have more than 20 months' notice of the government's plans and will be able to participate in the reformed schemes in relation to any eligible employment from 1 April 2022 onwards.

- 3.11 In introducing the reformed schemes in 2015, it was never the intention that the legacy schemes would continue for a long period of time. Parliament passed legislation such that no benefits would be provided under the legacy schemes in relation to employment after 1 April 2015, but allowed for exceptions to be made. The government intended for the exceptions made in scheme regulations to be short term 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. The Courts found that these exceptions gave rise to unlawful discrimination and this consultation sets out proposals to address this by allowing all members who were in service on 31 March 2012 and have relevant service after 1 April 2015 (around 3 million individuals), to choose to be members of the legacy schemes for the remedy period. Some of this group could be expected to remain in pensionable employment for decades, long after it was envisaged that the legacy schemes would be closed and at additional cost to the taxpayer.
- 3.12 By 1 April 2022, all members who were offered transitional protection from 2015 will in fact have reached their NPA in their legacy scheme. However, if such members decided to work beyond their legacy scheme NPA, they would then accrue benefits in their respective reformed scheme from 1 April 2022. To the extent that this change has an impact on such a member's pension it may be beneficial, for example due to higher accrual rates in the reformed schemes.

Question 9: Does the proposal to close legacy schemes and move all active members who are not already in the reformed schemes into their respective reformed scheme from 1 April 2022 ensure equal treatment from that date onwards?

Annex A

Technical details

Revisiting past cases

A.1 Many members who were in service for a part of the remedy period will have since retired and currently be in receipt of a pension. Such members would also be given a choice of benefits between the legacy and reformed schemes with respect to the remedy period. The member would make a retrospective choice whether to receive benefits from the legacy or reformed scheme with respect to their service after 1 April 2015. This would mean that:

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

A.2 If an actuarial adjustment was required with regards to the pension that a member could alternatively choose, then the actuarial factors in force at the date of their retirement would be used. This would ensure that the pension was retrospectively corrected to the same level it would have been if the member had had access to it at retirement. Such an adjustment might reflect a reduction if the member retired before the relevant Normal Pension Age, or an uplift if they retired after.

A.3 There are various issues and options that apply to the potential changes to pension commencement lump sums:

- for example, where a member's benefits retrospectively change, they could be permitted to revisit the lump sum commutation decision they made at retirement. This would allow members to commute some of the additional pension they were now receiving; or in the event that they received an increased automatic lump sum under a legacy scheme design, they might wish to reduce the level of any optional commutation. This would be subject to any limits required by schemes' rules and pensions tax law regarding the maximum allowance, and time allowed for payment, for pension commencement lump sum
- alternatively, where a member's benefits retrospectively changed, they could be prevented from reducing the cash lump sum already received at retirement. For members in this position the reformed scheme

pension, if chosen, would be adjusted to allow for an amount of commutation (on the usual terms) at least equal to any automatic lump sum given up on account of the change to a previous legacy scheme award (plus any previous optional commutation)

- A.4 Any decision made by an existing pensioner would retrospectively apply back to the date of retirement and the member would forego the right to the benefits payable from the member's original scheme with respect to the remedy period, where relevant. Any back-payments now owed to the member would be paid in a single cash payment with interest applied.
- A.5 There might be situations in which a member chose a lower level of benefit than originally received. For example, they might have foregone their reformed scheme benefits for legacy scheme benefits in order to receive a higher lump sum, despite receiving a lower level of ongoing pension. Or, alternatively, the reverse situation might occur, whereby a member opted for a higher level of ongoing pension and a lower lump sum. Where a member made a choice that resulted in a lower level of benefit, then any overpayments would need to be repaid by the member in order to access their revised benefits. If such a member received an increased pension commencement lump sum, then it is proposed that this would be reduced by any pension overpayments owed. In other cases, the member would be given the opportunity to repay any overpayments upfront, or over time. This will be made clear to the member when they are making their choice. Interest would apply in all these scenarios.
- A.6 If the benefits a member has received change, then tax adjustments may be required. In these cases, the tax rules will apply to the facts of an individual's updated situation. In broad terms this means if income goes up, more tax may be owed, but if income goes down, then the individual may be owed a tax refund. Where tax is owed by the member, it would not be collected for periods beyond the usual statutory 4-year time limit.

Question 10: Please set out any comments on our proposed method of revisiting past cases.

Member contributions

- A.7 Some schemes, primarily the police and firefighters' schemes, have different levels of member contributions, or different ways of calculating member contributions, between the legacy and reformed schemes. This means that if members choose to move from one scheme to another in accordance with the proposals set out above, there would need to be a 'balancing payment' (or 'balancing refund') in respect of their contributions to ensure the right level of contributions have been paid for the scheme benefits the member chose.

- A.8** Under the immediate choice option, information in relation to such payments/refunds would be provided to the member when making their decision shortly after 2022. Where a member owed contributions, they would be given the option to pay these upfront or over time. If the member had overpaid for the scheme they chose to be in, they would receive a taxable cash refund. Interest could be applied in both scenarios (see paragraphs A.63– A.65 below for more on interest).
- A.9** Under the DCU option, differences in employee contribution rates across schemes might be more complicated to rectify than under immediate choice, as it may not be known in the short term which set of benefits will ultimately be chosen. To address this, the government would propose to adopt a two-stage approach. The first stage would occur shortly after the end of the remedy period and would involve retrospectively imposing a charge on all members by reference to their legacy scheme contributions. The second stage would then be at the point a member made their deferred choice (e.g. at retirement), where if reformed scheme benefits are chosen, the contributions that would have been due under the reformed scheme in the remedy period would be charged, again retrospectively.
- A.10** Whilst such an approach may result in some members' contributions being amended twice, it ensures the correct level of contributions are ultimately charged for the set of benefits received, while treating members consistently at the earliest opportunity.
- A.11** Due to the nature of the employee contribution rates in the schemes for police and firefighters, either refunds or additional payments might be due at either stage, depending on the relevant legacy scheme. Stage one would only affect members who did not receive full transitional protection. Typically, it would result in refunds where the member joined the legacy scheme after 6 April 2006¹, with additional contributions being due if they joined before this date. Stage two would then impact members who chose reformed scheme benefits, and would generally result in additional contributions being due where the member joined the legacy scheme after 6 April 2006 and refunds if they joined before this date.
- A.12** At both stages, where a member owed contributions, they would be given the opportunity to pay these upfront, or over time through a repayment plan agreed with the scheme. If the member was due a refund this would be provided as cash. Interest could be applied in both scenarios (see paragraphs A.63 – A.65 below for more on interest).
- A.13** Adjustments to contributions, both at the end of the remedy period and at the point at which an individual receives their pension benefits, may result in tax adjustments. Further details are set out in Annex B.

¹ 6 April 2006 being the date on which new police and firefighters' schemes were introduced, replacing the 1987 and 1992 schemes respectively.

Question 11: Please provide any comments on the proposals set out above to ensure that correct member contributions are paid, in schemes where they differ between legacy and reformed schemes.

Voluntary member contributions

- A.14** All legacy and reformed schemes contain provisions, often differing, allowing members to make additional contributions to enhance their pension benefits. In older legacy schemes these had been added years (AY), but from around 2007 onwards this gradually changed to added pension (AP)². The main difference between AY and AP is that the former provides a pension amount that increases in line with the member's salary whilst in active service, whereas AP increases in line with inflation. In the reformed schemes covered by this consultation, AP is a feature of these schemes, as is faster accrual. All of these additional benefits increase a member's pension and the government's general approach means that it would be necessary to ensure the value of these benefits are reflected in the choice given to the member.
- A.15** Under both immediate choice and deferred choice underpin options all additional benefits purchased via voluntary member contributions in the remedy period could be converted to an equivalent value of AP in the scheme that the member is not currently in. This equivalent value of AP would only be added to the member's pension 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. Some legacy schemes' regulations and administrative processes may need to be updated in order to provide for an AP facility.
- A.16** There is an overall limit on the total amount of AP that can be purchased per member. This varies between schemes and between scheme designs. Where the relevant limit was exceeded (possibly retrospectively) solely as a result of proposals to remedy the discrimination found in *McCloud*, then the government proposes that such breaches would be ignored.
- A.17** Some of the reformed schemes also include an option to buy-out some or all of the reduction to pension if benefits are taken before NPA. This is known as Effective Pension Age (EPA) in the reformed scheme for civil servants (Alpha), Early Retirement Reduction Buy Out (ERRBO) in the reformed NHS pension scheme and Buy Out in the reformed Teachers' pension scheme.
- A.18** Because of the nature of EPA and ERRBO-type arrangements, which are clearly related to the reformed scheme benefit design with a higher NPA, it would not be possible to convert it into an equivalent value of AP in the legacy scheme. Members who are returned to the legacy scheme for the remedy period (under either IC or DCU) would therefore receive a refund of their contributions to such arrangements. A refund would void the EPA or

² The schemes for health service workers and teachers describe added pension as additional pension – the terms are interchangeable.

ERRBO benefit even if reformed scheme benefits were ultimately chosen. Some workforces have agreements in place with employers to share the cost of EPA and ERRBO. In such situations, when receiving a refund, members would only be offered the full value of their own contributions, as they would no longer be providing for the early pension age for which they were specifically intended. Any refund of EPA or ERRBO voluntary member contributions would be taxable in the usual way. A refund would not be available for any other forms of voluntary member contribution. If a member later returns to the reformed scheme, the option to make additional contributions towards ERRBO/EPA will be open to them.

- A.19** It is the government's intention that the tax position in general for voluntary contributions, which will have usually received tax relief, should reflect an individual's updated situation in the usual way.
- A.20** Most public service schemes³ also have separate money purchase (additional voluntary contribution) (MPAVC) schemes alongside the main scheme. MPAVC schemes permit members to pay additional contributions to build up a separate defined contribution pension pot with an external provider. These schemes are outside the scope of this consultation as they are unaffected by the litigation.

Question 12: Please provide any comments on the proposed treatment of voluntary member contributions that individuals have already made.

Annual benefit statements

- A.21** Section 14 of the Public Service Pensions Act 2013 introduced a requirement for schemes to provide benefit information statements to active scheme members annually from 2015. These are more commonly known as "annual benefit statements" (ABSs). The detail of what an ABS must include are set out in Treasury directions (including information about legacy and reformed scheme benefits). ABSs also include other information provided for in legislation introduced by the Department for Work and Pensions (DWP)⁴ which applies to all pension schemes.
- A.22** ABSs currently include details of two sets of benefits for members who moved from the legacy to the reformed schemes⁵ (covering the periods to 31 March 2015 and from 1 April 2015 respectively). If the government decides, as a result of this consultation, to pursue the immediate choice option then no changes to ABS contents would be required until after a

³ With the exception of schemes for firefighters and armed forces personnel.

⁴ The Occupational and Personal Pensions (Disclosure of Information) Regulations 2013
<http://www.legislation.gov.uk/uksi/2013/2734/contents/made>

⁵ This is to reflect the final salary link for the benefits earned under legacy schemes for those members moved to the reformed schemes in April 2015.

member had exercised their choice. That would avoid any confusion for the member ahead of making their immediate choice.

A.23 Under the DCU option, scheme administrators would be required to produce ABSs 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). This may require significant system changes and take some years to implement and test. It would also be complex for members, so careful consideration would be needed to ensure the content was as clear as possible.

A.24 Members who are or may be subject to an annual allowance charge would require an accurate pension savings statement, setting out the value of their pension growth under the legacy and reformed scheme designs for the remedy period from an early stage. Schemes currently write each year to members who may be subject to an annual allowance charge based on their accrual in the scheme in question, to prompt them to consider their tax affairs. There are complexities related to a deferred choice underpin for this group of scheme members; these are set out more fully in Annex B.

Question 13: Please set out any comments on our proposed treatment of annual benefit statements.

III health retirement (IHR)

A.25 There are several categories of IHR cases, which include:

- members who had transitional protection and were accepted for IHR pension under their legacy scheme during the remedy period
- members who had transitional protection and were rejected or not considered for IHR pension under their legacy scheme during the remedy period, including because they were over their legacy scheme NPA
- members who did not have transitional protection and were accepted for IHR pension under their reformed scheme – these cases may need to be reconsidered under legacy scheme IHR rules which are likely to differ
- members who did not have transitional protection and were rejected for IHR pension under their reformed scheme – these cases may need to be reconsidered under legacy scheme IHR rules which are likely to differ

A.26 Any member who was refused an IHR pension in one scheme may be eligible for IHR in their alternative scheme. This is a result of differing scheme rules and eligibility requirements. In particular, the later pension age in the reformed schemes may have led to some members being refused IHR

because medical advisers deemed the member able to recover and return to work in the extended time period to the later pension age. Conversely, the later pension age also means that IHR – where granted under the reformed scheme – can be more valuable because the enhancements in respect of potential lost service are calculated to a later age in the reformed schemes. IHR cases involve members, employers, medical assessors and scheme administrators. Therefore, in order to reconsider a case, member consent would be required because of the likely need to share medical records and evidence.

- A.27** A member 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. For example, a member who was accepted for IHR pension in the legacy scheme would not automatically be accepted under the reformed scheme due to the later NPA, as mentioned above. 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 payable (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. Member consent might also be required in this situation, if medical advisers needed to revisit their assessment.
- A.28** As with any cases involving post-award adjustments to benefits, there may be tax implications. In these cases, the tax rules will apply to the facts of an individual's updated situation. In broad terms this means if income goes up, more tax may be owed, but if income goes down, then the individual may be owed a tax refund. Where tax is owed by the member, it would not be collected for periods beyond the usual statutory 4-year time limit.
- A.29** There may also need to be consideration of how state income-related welfare benefits should be treated when these have already been assessed and paid on the basis of the previous pension award already in payment. However, this applies to revised benefit awards of all types, not just those paid in relation to IHR.
- A.30** As set out in paragraph 2.24 above, the government will work with schemes to seek to offer reformed scheme members undergoing IHR a choice of legacy or reformed scheme benefits at retirement, where this is administratively possible.

Question 14: Please set out any comments on our proposed treatment of cases involving ill-health retirement.

Cases where members have died since 1 April 2015

- A.31 There will be a number of different circumstances in which members within scope of the remedy may have died since 1 April 2015. These will include members in active service; deferred members and pensioners, including those who had received payments related to serious ill health conditions (life limiting illnesses) or who retired due to ill health.
- A.32 Such cases will need to be handled sensitively. Cases will need to be revisited to ensure that any increase to benefits arising from these changes due either to the member before their death, or their survivors, or to the member or their survivors' estates, can be paid. Where possible, these cases would be prioritised given the obvious need for grieving families to resolve financial matters relating to their loved one in as timely a manner as possible.
- A.33 There are options around how these cases could be dealt with, which largely would not differ under DCU or immediate choice. Where any increase in benefits was due, schemes could 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. 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.
- A.34 There are potential complications in cases where dependent children are in receipt of survivor pensions, but there is no adult survivor's pension in payment to the person responsible for the child or children. This could include situations in which there was an adult survivor's pension in payment to someone who was not the guardian of the dependent children.
- A.35 Legacy schemes generally include provision for spouses and civil partner's pensions, but some did not provide for unmarried partner's pensions (and even when they did, they might not cover all past service). This means that the choice between a legacy and reformed scheme could have significant implications for the pensions of any dependent children, as well as any surviving unmarried partner. Where a member of a legacy scheme was unmarried but had a partner who would qualify for a survivor pension under the reformed scheme, and that adult survivor pension was put into payment, it could impact the value of the pension or pensions paid to the dependent child or children.

- A.36 In such a situation, where the child and the adult newly receiving a survivor pension (or receiving an altered survivor pension which could also affect the child's pension) were not part of the same household, we would not propose to reduce any dependent child's pension. This is because of the potential financial impact of doing so on the child – and their parent or guardian's lack of control over the decision affecting the child's pension payment.
- A.37 If, however, dependent children were part of the same household as the person receiving the survivor's pension then the usual rules limiting the combined total of survivor and children's pensions would apply.
- A.38 An argument against permitting this kind of choice between a legacy scheme without unmarried partner benefits and a reformed scheme with such benefits could potentially be made in some schemes, where members have previously been given the option to move from a legacy scheme to another pre-2015 scheme which did offer survivor benefits to unmarried partners. Where a member has previously chosen to remain a member of a specific legacy scheme, there may be a question as to whether that choice should be respected and retained, particularly where the member had been with the unmarried partner at the time the earlier option was exercised.
- A.39 In cases where a deceased member (with no dependent children) was not in receipt of transitional protection there may be an unmarried partner pension in payment from the reformed scheme, which would not be payable from the legacy scheme. Presenting the surviving partner with a "choice" would seem pointless, since they may be choosing between continuing to receive a pension and receiving nothing. In such cases, it is therefore proposed that where no higher pension payment would be due to the survivor or to the deceased's estate, no contact should be made with the relevant parties.
- A.40 It is acknowledged that any reopening of a late member's estate once probate has been sought and granted in applicable cases, and any inheritance or other tax charges paid, is likely to be unwelcome and potentially distressing. Also, discretionary death lump sums paid to a nominee generally do not count towards the value of an estate, and discretionary death lump sums paid to an estate generally do not count for inheritance tax purposes. However, if there were arrears of continuing pension payable in respect of the deceased member those would be part of the estate. Any increase to a lump sum paid to a nominee, or to a survivor pension in payment might impact the individual's personal tax position; or their entitlement to any income-related state benefits in payment.
- A.41 Any tax charges triggered solely as a result of payments related to McCloud remedy would not fall to the member or their survivors. Also, any additional out of pocket expenses incurred (for example, as a result of the reopening of a probate application) would be reimbursed where evidence of these was provided to the relevant scheme.
- A.42 The government is working with schemes to consider how to prioritise cases where there is a need to do so.

Question 15: Please set out any comments on our proposed treatment of cases where members have died since 1 April 2015.

Contingent decisions

- A.43** These include decisions that individuals took as a result of the (actual or perceived) implications of the introduction of the reformed schemes. These could include members choosing to opt out of the reformed schemes for various reasons, which will differ between individuals.
- A.44** 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. 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.45** If, under either IC or DCU, 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, before the individual would be deemed to be eligible for remedy. Tax adjustments may also need to be made (see Annex B for more detail).
- A.46** 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.
- A.47** Where a member, and their employer, paid contributions owed for the relevant period then any FSL would be restored.

Question 16: Please set out any comments on our proposed treatment of individuals who would have acted differently had it not been for the discrimination identified by the Court.

Voluntary pension transfers (public sector transfer club and non-club)

- A.48 All the schemes covered by this consultation are members of the Public Sector Transfer Club. The Club is an arrangement that facilitates the mobility of employment within the public sector by enabling employees to avoid the reduction in the value of their accrued pension that could otherwise occur as a result of changing employment. Final salary pension transferees are awarded a service credit that maintains the member's final salary link for the pension accrued in their previous service. CARE transferees are awarded a pension credit that continues the rate of in-service revaluation that was provided in the member's legacy scheme.
- A.49 The intention of the Club is that a member should not lose out as a result of changing employment within the public sector. Equally, the member should not receive benefits that are higher in value than if they had not changed employment.
- A.50 If a member transferred under the Club before having made a choice between legacy and reformed benefits (as would be the case under DCU, or under IC where the member transferred before that was implemented), then one option would be to bring forward that choice to the date of transfer so that only one set of scheme benefits for the remedy period needs to be considered for the transfer. This would simplify the Club administration as the scheme receiving the transfer would avoid having to maintain dual records of two transfer credits. However, this effectively means that the transferring member, even under the DCU option, is required to make an immediate choice at the point of transfer.
- A.51 There would, however, still need to be some retrospective application of this approach to cover transfers that had already been made. This would be more complex where a member had moved schemes multiple times.
- A.52 In addition, if the transfer took place before the end of the remedy period, the member would potentially have a further choice of benefits in their new employment if the scheme to which they had transferred was also covered by remedy. This could increase the complexity of the transfer administration and the choice that the member faced.
- A.53 This would be simplified by giving the member a single choice that covered their pension accrued in their old and new employment. A single choice is also closer to the situation of a member who did not change employment.
- A.54 In certain situations, a transferring member might be at an advantage if they could make two choices. For example, if they received a pay rise on promotion when they changed employment, they might be able to receive a higher pension than if they had not changed employment, by selecting final salary benefits for their old employment and CARE for their new employment.
- A.55 When transferring to a scheme within the Club, which is not affected by the McCloud and Sargeant judgment then members would be required to make

their choice at point of transfer in any case. Such schemes do not generally offer CARE benefits⁶, therefore this choice is likely to be between either final salary benefits within the Club or transferring CARE benefits outside of the Club (or retaining them as a deferred benefit if the scheme doesn't accept non-Club transfers).

- A.56** Under the DCU, or before an immediate choice was implemented, if a member opted to transfer their benefits outside of the Public Sector Transfer Club it is not expected that they would by then have made a choice between legacy and reformed scheme benefits for the remedy period. In such a situation the scheme would calculate two Cash Equivalent Transfer Values, one on each set of benefits, and pay across the highest of the two values.

Question 17: If the DCU is taken forward, should the deferred choice be brought forward to the date of transfer for Club transfers?

Question 18: Where the receiving Club scheme is one of those schemes in scope, should members then receive a choice in each scheme or a single choice that covers both schemes?

How should transfers to and from the LGPS be treated?

- A.57** The Local Government Pension Scheme in England and Wales is not in the scope of this consultation document. Its transitional protection takes the form of an underpin⁷. The difference between the LGPS underpin and the choice being considered for other schemes in scope means that options for transfers between the LGPS and other schemes would be administered differently. This could be more complex for transfers taking place during the remedy period if the benefit type awarded in old and new employment were to be linked. This would be exacerbated if members did not make their choice at the point of transfer. The Ministry of Housing, Communities and Local Government will consult on more detailed proposals on the LGPS underpin, and the proposed approach to transfers to/from the LGPS, in due course.

Divorce cases

- A.58** Usually schemes calculate a cash equivalent transfer value (CETV) when requested for court proceedings in cases of divorce (marriage) or dissolution (civil partnership). Depending on the outcome of the divorce proceedings, schemes may create a pension account for the member's ex-spouse (who

⁶ Except for public service schemes based in the Channel Islands.

⁷ The underpin provides for a calculation of better of Final Salary or CARE terms for service before the date the new scheme began (depending on meeting certain criteria).

becomes a “pension credit member” of the scheme; the scheme member becomes a “pension debit member”).

- A.59** Alternatively, if an “earmarking order⁸” or “attachment order” is in place, the ex-spouse or civil partner does not become a member of the scheme but is instead entitled to a proportion of the pension when it comes into payment. In such cases, the ex-spouse or civil partner’s pension amount will result from the choice exercised by the scheme member as to which scheme they would prefer for the remedy period.
- A.60** Any cases where a CETV has already been issued or which need a CETV before government decides which remedy option to implement, and before that remedy is legally effective, might well be subject to change. It is acknowledged that this is undesirable, and that it might affect decisions about the sharing and proportioning of assets in cases not yet settled.
- A.61** However, Pension Sharing Orders specifying a percentage rather than a cash amount⁹ to be awarded to the member’s ex-spouse or civil partner would permit adjustments to the pension credit (and debit) member’s pension amount to reflect remedy, at the relevant point in time.
- A.62** Any immediate or 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. This is subject to any Order from the courts directing otherwise. The pension credit member will be awarded the percentage (as specified by the courts) of the higher CETV due under remedy; this will not be changed to reflect any choice the scheme member (pension debit member) makes, which would result in a lower pension amount.

Question 19: Please set out any comments on our proposed treatment of divorce cases.

Interest of under- or over-payments and refunds

- A.63** There is no consistent approach to interest across public service schemes. Some scheme regulations contain provisions relating to interest, some do not. In the latter schemes, interest is decided on a case-by-case basis. Across all schemes interest is sometimes provided for in decisions from the Pensions Ombudsman or higher courts. Given the likely need (under both immediate choice or DCU) for retrospective adjustments to pensions in payment (or formerly in payment), to lump sums, to employee contributions and because members might be able to choose refunds of contributions – sometimes many years after a payment was originally made – it is acknowledged that it

⁸ Earmarking orders are now only available in Scotland. In England, Wales and Northern Ireland earmarking orders were replaced by Pension Sharing Orders or pension attachment orders from the late 1990s.

⁹ PSOs in England and Wales usually specify percentages; whereas in Scotland they can either specify a percentage or a cash amount.

would be necessary to pay interest where the scheme was paying amounts of money to the member.

- A.64** The government will need to decide whether it is appropriate to charge interest where the member owed a debt to the scheme. In a case where employee contribution rates differ between legacy and reformed schemes, and a choice made under the DCU perhaps 30 years from now means that a member paid employee contributions at the 'wrong' (lower) rate during the remedy period, there is a question as to whether the member should be charged a rate of interest on the contributions owed. Theoretically the member who owed 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.
- A.65** In relation to appropriate rates of interest, one option is to set consistent rates across all schemes. These could be contained in scheme regulations to ensure consistency and transparency. As an example, in the Teachers' Pension Scheme (TPS) the regulations set out that interest paid on late payment of benefits is based on the Bank of England base rate at the time the late payment is made. Where the member has been overpaid benefits, and therefore owes the scheme, the TPS charges interest at the discount rate used for the scheme's actuarial valuation plus CPI.

Question 20: Should interest be charged on amounts owed to schemes (such as member contributions) by members? If so, what rate would be appropriate?

Question 21: Should interest be paid on amounts owed to members by schemes? If so, what rate would be appropriate?

Question 22: If interest is applied, should existing scheme interest rates be used (where they exist), or would a single, consistent rate across schemes be more appropriate?

Abatement

- A.66** 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.67** Provisions providing for abatement of pensions on re-employment exist in some older legacy schemes, but do not always apply to all pensions in payment; and in some legacy schemes usually only to some of those taken before Normal Pension Age. Abatement usually only applies to pensioners re-employed in the same sector (intra-service abatement). However, where

there isn't fair and open competition before a pensioner is re-employed in another area of the public sector (inter-service abatement), pension or pay might be abated.

- A.68 Where the DCU or immediate choice 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.69 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 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.
- A.70 Benefits earned in reformed schemes are not subject to abatement.

Question 23: Please set out any comments on our proposed treatment of abatement.

Annex B

Pensions tax relief: implications of the options to remove unlawful discrimination

- B.1** Most active members will not experience any changes to their tax liability as a result of the measures to remove the discrimination outlined in Chapter 2. However, a small minority may experience tax impacts, either as a result of changes to employee pension contribution rates, or changes to pension accrual causing them to exceed limits on pensions tax relief. These impacts could be either positive (individuals will be able to reclaim any overpaid tax) or negative (for example where higher pension accrual means higher tax charges for exceeding pensions tax relief limits).
- B.2** This annex sets out how different aspects of the pensions tax regime operate, and what the implications may be for the small minority of members who are affected. Those implications differ under the immediate choice and deferred choice underpin (DCU) options, so this annex sets out how the tax system will apply to each option separately, after a brief overview of the key elements of pensions tax relief.

Pensions tax relief: tax relief on contributions, the annual allowance and the lifetime allowance

- B.3** Contributions to registered pension schemes receive tax relief at an individual's marginal rate. The majority of public service pension schemes are registered for tax purposes¹. This tax relief is limited in some circumstances, through the annual allowance and the lifetime allowance, so that it is more effectively targeted to encourage pension saving – see paragraphs B.5-B.8 below.
- B.4** For most public service pension schemes, the amounts of member contributions required under the legacy and the reformed schemes do not differ. This means that most members will have received the correct amount of tax relief on their member contributions. However, for some schemes, member contributions owed may differ between legacy and reformed

¹ Exceptions are the legacy judicial schemes including JUPRA, FPJPS and JPS 1981 schemes for judges, which are not tax registered and to which members make contributions after tax. These schemes are outside of the scope of this consultation.

schemes. In the main, this is the case for the police and firefighters' schemes, as highlighted in paragraph A.11 above. In these cases, if a member's pension benefits change for the remedy period, then their contributions will change, along with the tax relief on those contributions.

- B.5** The amount of tax-relieved pension savings that can be accrued in a year is limited by the annual allowance (AA). The standard AA is currently £40,000, but for those on the highest incomes, it tapers down to a minimum level of £10,000 from April 2016 to April 2020 and £4,000 from April 2020 onwards.
- B.6** For defined benefit pension schemes, liability for tax charges above the annual allowance is calculated using the value of pension accrued in a particular year. Where an individual's pension accrual in a single year exceeds the AA, then a tax charge may be due on the amount accrued above the AA². Therefore, for the small minority of individuals who may be liable for AA tax charges, a retrospective change in the value of pension benefits accrued for remedy period years could trigger an AA payment or adjustment.
- B.7** The amount someone can accrue in a registered pension scheme in a tax-efficient manner over their lifetime is limited by the pensions lifetime allowance. The lifetime allowance is £1,073,100 for 2020-21.
- B.8** If the value of an individual's pension accrued for the remedy period changes, then the total value of their pension over their lifetime will also change. This could have lifetime allowance charge implications, where the total value of their pension benefits is greater than the allowance.

Statutory time limit for reassessing tax in previous years

- B.9** There is a usual 4-year statutory time limit for reassessing tax for previous years. This means that where an individual's pension benefits change for past years, altering their tax position, HMRC can only collect tax where it is owed for the current tax year and the 4 full tax years immediately preceding the point at which the individual's benefits change.
- B.10** So, where an individual's benefits change so that additional tax is due for a tax year that ended more than 4 full tax years previously, HMRC cannot collect that additional tax.
- B.11** However, where an individual's change of benefits decreases their tax liabilities, then the government will compensate them for all years of the remedy period, regardless of the tax year the change in benefits relates to.

² Any excess over the annual allowance can be offset against unused allowances from the previous three years, so a tax charge will not always occur.

Tax implications of immediate choice

- B.12** Under immediate choice, an individual will be required to make an irrevocable choice about which pension benefits they have accrued during the remedy period. The government expects that most people will make this choice probably within a year or two of the end of the remedy period. However, some of those retiring sooner may make it earlier.
- B.13** If the individual selects the benefits they have already been accruing during the remedy period, then there will be no tax changes – that member will already have received the right amount of tax relief. This means there would be no tax impacts for transitionally protected members who choose legacy scheme benefits, or for non-protected members who choose reformed scheme benefits.
- B.14** If the individual selects the benefits from the other scheme (so a protected member selects benefits from their reformed scheme or a non-protected member selects benefits from their legacy scheme), their pension benefits will change and there could therefore be changes to their tax position.
- B.15** The usual 4-year statutory time limit for reassessing tax will operate from the point at which an individual communicates their choice of benefits to their pension scheme. So, for example, an individual who elects in June 2023 to accrue legacy scheme benefits during the remedy period would need to pay any additional tax arising from an increase in pension accrual after 6 April 2019. They would not need to pay additional tax related to any increases in pension accrual before that date. However, they would be eligible for compensation for any tax they were owed as a result of lower pension accrual at any point in the remedy period.

Tax relief on contributions

- B.16** For members of schemes where contributions differ between legacy and reformed schemes, an adjustment will be made at the point at which the member makes their immediate choice³. Contributions to these schemes are made tax-free, so this adjustment will have implications for an individual's tax position.
- B.17** Where individuals are owed a refund of contributions, the relevant amount will be returned to them and taxed as income with respect to the relevant past tax year. In line with the usual 4-year statutory time limit, tax will not be collected on returned contributions which relate to any years of the remedy period more than 4 full tax years before the point at which the choice is irrevocably made between pension benefits.
- B.18** Where individuals owe more in contributions, the additional contributions will benefit from tax relief at an individual's marginal rate in the year the contributions are paid, subject to the usual tax relief rules.

³ As set out in Annex A, where a member owes contributions they will be given the option to pay these upfront or over time. If a member has overpaid for the scheme they choose to be in, they will receive a cash refund.

Annual allowance

- B.19** For a small minority of individuals with sufficiently high income and/or pension accrual, choosing different benefits to those already accrued for the remedy period will result in an adjustment in annual allowance charges. This adjustment will be made at the point the individual makes their choice between pension benefits for the remedy period years.
- B.20** This reassessment will examine these individuals' AA positions for specific years of the remedy period. Individuals whose pension accrual has exceeded their AA or risks exceeding it will need to recalculate their annual allowance position for each year of the remedy period based on their new pension benefits for that year, using the relevant tax rate for that year and taking into account their carry forward position from previous years⁴. They will then need to compare this revised charge to any annual allowance charge they have already paid for that year. This will establish whether, for each past year, they are owed a tax refund, or whether they could owe more tax. Individuals affected will need to report any changes within the statutory time limit to HMRC. Individuals may also need evidence of their tax position for earlier years to help them access the appropriate compensation.
- B.21** For some individuals who decide to receive legacy rather than reformed scheme benefits for the remedy period, or vice versa, their annual allowance charge liability might be greater under the benefits they now choose to receive. In these cases, the government will not collect additional tax relating to any years of the remedy period more than 4 full tax years before the point at which the choice is made between benefits. This is in line with the usual 4-year statutory time limit. But for individuals whose choice of different benefits for the remedy period reduces their AA liability, the government will refund the difference in charges due for every year of the remedy period – including the earlier years.
- B.22** Where additional tax is owed by the individual, they will have the opportunity to utilise Scheme Pays if they do not want to pay the tax charge upfront. If the individual is owed a tax refund or its equivalent and 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.
- B.23** For members who may be subject to an annual allowance charge on the basis of their accrual in a particular public service pension scheme, that scheme will provide updated pension input amounts under the two sets of benefits, before members make their immediate choice. Individuals will need to consider this and may wish to consider taking advice on the tax implications, before making their decision.
- B.24** Once the choice of pension benefits for the remedy period has been made, any future changes in the value of those benefits (for example the revaluation of CARE benefits or earnings growth on final salary benefits) will

⁴ Individuals' carry forward positions will alter as a result of choosing different pension benefits for the remedy period. For remedy period years before the 4-year limit, individuals' carry forward positions will be unchanged, as these tax years are closed. However, where an individual would have had more unused carry forward based on the benefits they ultimately choose, the government will compensate them for any higher AA charges resulting from leaving their carry forward unchanged from before the 4-year limit. This also applies under the DCU.

be included in future annual pension accrual for tax calculations in the normal way.

Lifetime allowance

- B.25** Under immediate choice, the scheme benefits which contribute to calculating the lifetime allowance position will be those benefits which the individual has chosen to receive for the remedy period. This calculation will be done in the usual way when the individual receives their pension benefits, for example when they retire. Any tax owed by those with significant amounts of lifetime pensions savings will be paid at that point.

Tax implications of deferred choice underpin (DCU)

- B.26** Under the DCU, members will be deemed in 2022 to have been members of their legacy scheme for the remedy period. When the member takes their benefits, for example when they retire, they will have a choice about which set of benefits to take for the remedy period – either those from their legacy scheme or those from the reformed scheme.
- B.27** Where tax adjustments flow from individuals being deemed to have been members of their legacy scheme for the remedy period, the usual statutory 4-year time limit for reassessing tax will operate from 2022. For the minority of individuals for whom this change in accrual means more tax is owed, they will need to pay the additional tax due on increases to pension accrual arising in the current tax year and previous 4 full tax years. So, if scheme members are moved back into their legacy schemes on 1 April 2022, they must pay tax owed on accrual increases arising since 6 April 2017. They would not need to pay additional tax related to any increases in pension accrual before that date. For individuals for whom this change in pension accrual means lower tax charges, they will be eligible for compensation for any tax they are owed as a result of lower pension accrual at any point in the remedy period.
- B.28** Where tax adjustments are triggered by a member taking their benefits, the statutory 4-year time limit will operate from the point at which they communicate their choice of benefits to their pension scheme.

Tax relief on contributions

- B.29** For schemes where contributions differ between legacy and reformed schemes, the DCU option could result in an adjustment in contributions, and in tax relief owed on them, either at the end of the remedy period and/or at the point an individual receives their pension benefits.
- B.30** Where an individual's remedy period pension contributions change in 2022, as a result of being deemed to have been in their legacy scheme since 2015, then a tax adjustment will be required at this point. This will operate in the same way as under immediate choice. Tax relief will apply at an individual's marginal rate, subject to the usual tax relief rules, when they pay contributions to make up for any amount they owe. However, tax owed on any contributions repaid to the individual will only be collected for the

current tax year and preceding 4 full tax years, in line with the usual statutory limit. It will be collected at the individual's marginal rate with respect to the year in which contributions are being corrected.

- B.31** When an individual retires or otherwise takes their pension benefits, a second adjustment may be required. If the individual opts to receive legacy scheme benefits no further adjustment to contributions will be required, and therefore no tax adjustment. But if the individual chooses reformed scheme benefits then a further adjustment of contributions owed will be necessary, with the corresponding adjustment in tax relief or tax owed. Tax relief will be given at an individual's marginal rate when they pay additional contributions. Where tax is owed due to a reduction in contributions, it will be collected for any remedy period years within the current tax year and the preceding 4 full tax years of an individual receiving their pension benefits, as under the usual statutory time limit.

Annual allowance

- B.32** Under the DCU, changes to pension accrued over the remedy period either in 2022 or at the point an individual receives their pension benefits might trigger an AA charge or adjustment for some individuals.

Adjustments in 2022

- B.33** For a minority of individuals there may be an annual allowance charge adjustment when the remedy period ends. At that point, all eligible members will be deemed to have been members of their legacy scheme for the remedy period, regardless of whether they had originally been transitionally protected or not. For those individuals who were protected in 2015, and consequently have accrued legacy scheme benefits since 2015, their pension benefits will remain unchanged and no annual allowance charge adjustment will be required. But for unprotected members, being deemed to have been members of their legacy scheme will retrospectively alter the pension benefits they have accrued over the remedy period.
- B.34** As under immediate choice, for a small minority with sufficient levels of income and/or pension accrual, this change could trigger an adjustment in liability for the AA charge. Where an individual's AA charge liability for remedy period years is reduced by being deemed to be in their legacy scheme, the government will refund the difference. 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 a very small number of cases an individual's AA charge liability may be higher following the change. In this case, their tax position for the current tax year and the previous 4 full tax years will need to be corrected, and they will need to pay the tax owed for those years to HMRC. Such members will have the opportunity to utilise Scheme Pays if they do not want to pay the tax charge upfront.
- B.35** As under immediate choice, in order to establish whether individuals owe tax or are owed a refund or compensation, the small minority paying or at risk of paying AA charges will need to recalculate their annual allowance position for each individual year of the remedy period, taking into account their tax

rate and carry forward position for each year⁵. Any changes within the statutory time limit will need to be reported to HMRC. Individuals may also need evidence of their tax position for earlier years to help them access the appropriate compensation.

- B.36** From 2022 onwards, under the DCU, the member's annual allowance position will be calculated on the basis of their entitlement to legacy scheme benefits for the remedy period, until the member takes their pension benefits.

Adjustments when an individual receives their pension benefits

- B.37** When the member takes their benefits, for example when they retire, if they decide to take legacy scheme benefits for the remedy period years their pension benefits will remain unchanged, and there will be no further adjustment for annual allowance purposes. However, if they choose at that point to receive reformed scheme benefits for the remedy period years, then the value of their pension accrual for the remedy years could change significantly. Any increase resulting from their choice would all occur in the single tax year at the point the member chooses which benefits to take. This could trigger an AA liability in that year. That liability could be significant, and, because it is concentrated in one year, it could be greater than the total AA liability that individual might have faced had their pension benefits for the remedy period always been the reformed scheme benefits. This is because many of these members would either not have faced an AA charge, or their AA liabilities would have been smaller, had they always been considered to accrue benefits in the reformed scheme. In that case, the increase in pension value would have been more evenly spread over the whole remedy period rather than in just one year, and greater use could have been made of the annual allowance itself and the 3 year carry forward rule.
- B.38** As these effects are a direct consequence of the design of the DCU option, the government considers that it would not be fair to expect individuals to pay a potentially significant annual allowance charge that could result. The government will therefore compensate individuals for the difference in their annual allowance charge liability for reformed scheme benefits above legacy scheme benefits for the remedy period years, for the year in which individuals take their pension benefits. The government is developing a process whereby the public service pension scheme can declare and pay the relevant AA charge relating to the choice of reformed scheme benefits in the remedy period on the member's behalf. Therefore, while the member's choice of pension benefits could generate this specific AA charge, they would not need to do anything. However, members would still be liable to report and pay AA charges incurred for any other reason.

⁵ For remedy period years before the 4-year limit, individuals' carry forward positions will be unchanged, as these tax years are closed. However, where an individual would otherwise have had more unused carry forward on the basis of receiving legacy benefits since 2015, the government will compensate them for any higher AA charges which result from leaving their carry forward unchanged from before the 4-year limit

Lifetime allowance

- B.39** An individual's lifetime allowance position is calculated when they receive their pension benefits, for example when they retire. Under the DCU, the lifetime allowance calculation will be based on the benefits the member has selected for the remedy period, either legacy scheme or reformed scheme benefits.

Understanding the likely AA impacts on members

- B.40** An individual's AA position depends on a range of factors that are specific to them. These include, for example, their salary and length of service. Their AA liability also depends on whether they have any other pension besides their public service pension, and their total income including any income separate to their public service salary. Consequently, it is not possible to give firm assessments of which, and how many, scheme members will be affected by AA adjustments resulting from immediate choice or the DCU. Circumstances also differ between workforces, given each workforce's legacy and reformed schemes have their own particular characteristics. In the broadest terms, it might be expected that those with high but fairly steady public service salaries might see lower AA liability in the legacy compared to reformed schemes. But individuals who experience very significant pay rises could pay higher AA charges under legacy schemes, although this requires very particular circumstances around length of service and salary levels to be the case. Workforces whose legacy schemes involve double accrual may also, at higher salary levels, see higher AA liabilities for legacy rather than reformed schemes.
- B.41** Overall, the government does not expect the AA, or adjustments to the AA tax liability, to be a relevant factor for the vast majority of scheme members who are within the scope of this consultation. However, those scheme members who think they may be liable for AA charges given their levels of income or pension accrual may want to take the taxation of immediate choice and DCU into account when responding to this consultation with their preferences between the two options.

Question 24: Please set out any comments on the interaction of the proposals in this consultation with the tax system

Annex C

Member examples

This annex provides further examples, which have been provided by the Government Actuary's Department, to illustrate the choice of benefits available to members. These examples highlight some (but not all) factors which may impact which scheme is better for certain members.

These examples are:

- 1 A nurse in the NHS Pension Scheme (2015 scheme and 2008 section)
- 2 A teacher in the Teachers' Pension Scheme (NPA 60 section)
- 3 A teacher in the Teachers' Pension Scheme (2015 scheme and NPA 65 section)
- 4 A civil servant Administrative Officer in the civil service pension scheme (Alpha and Premium section of PCS)
- 5 A police constable in the Police Scheme (2015 scheme and 1987 section)

All examples rely on the following assumptions:

- the pension calculated is the pension accrued over the remedy period (1 April 2015 to 31 March 2022), as payable at retirement. In practice, such members will also have pension relating to pre-2015 and post-2022 periods, which is not considered here
- after the remedy period, the member continues in active service until they retire
- inflation reflects actual experience up to 2020, with 2% per year assumed thereafter
- for simplicity, the salary increase in each of the examples is the same rate for every year since 2015, in practice this will not be the case
- salary increases, promotions and retirements occur on 31 March in the relevant year
- the current State Pension age timetable is followed
- the pension amounts are in nominal terms at retirement
- the amounts are shown rounded to the nearest £10

Please note that these examples are for illustrative purposes only. Generally, they only consider one of the key variables which may impact the choice the member faces, in practice other variables may also be significant. The choice of benefits will depend on individual circumstances and these examples should not be used to

inform that choice. The comparisons are based on the pension payable at retirement, however in practice there are also other differences in benefits, such as survivor's pension, which may influence a members decision.

Example 1

A **nurse** who is a member of the **NHS Pension Scheme** (2015 scheme and 2008 section).

In **2012 they were 45**, and so **did not receive transitional protection**. However, they will now be given a **choice of pension for their service over the remedy period**, of either:

| Legacy scheme (2008 section) | or | Reformed scheme |
|----------------------------------------------------------------------------------------------------|----|---------------------------------------------------------------------------------------------------------------------------|
| 1/60 th of final salary each year Optional lump sum Payable unreduced from age 65 | | 1/54 th of revalued salary each year Optional lump sum Payable unreduced from State Pension age (age 67) |

If they had a **salary of £30,000 in 2015**, experience future annual **salary increases of 1% above inflation** and **retire at 65**, their choice with respect to the remedy period will be between the following pension amounts at retirement:

| Legacy scheme: | or | Reformed scheme: |
|----------------|----|------------------|
| £5,450 pa | | £6,040 pa |

Assuming they choose to not give up any pension for a lump sum and allowing for the reformed scheme benefits being reduced for early retirement.

This means they would likely be **better off receiving reformed scheme benefits**.

Alternatively,

If the member was promoted twice, receiving **an additional 10% salary increase** at the end of the remedy period **and an additional 5% salary increase** five years later, their choice if retiring at age 65 now becomes, either:

| Legacy scheme: | or | Reformed scheme: |
|----------------|----|------------------|
| £6,270 pa | | £6,040 pa |

This means they would likely be **better off receiving legacy scheme benefits**. Therefore, in this example, a change in future career progression has changed which scheme is expected to be more beneficial.

Example 2

A **teacher** who is a member of the **Teachers' Pension Scheme** (Normal Pension Age 60 section).

In **2012 they were 50**, and so **received transitional protection**. However, they will now be given a **choice of pension for their service over the remedy period**, of either:

| Legacy scheme (NPA 60) | or | Reformed scheme |
|------------------------------------------------------------------------------------------------------------------|----|---------------------------------------------------------------------------------------------------------------------------|
| 1/80 th of final salary each year Automatic lump sum (3x pension) Payable unreduced from age 60 | | 1/57 th of revalued salary each year Optional lump sum Payable unreduced from State Pension age (age 67) |

If they had a **salary of £40,000 in 2015**, experience future annual **salary increases of 2% above inflation** and **retire at their State Pension age (67)**, their choice with respect to the remedy period will be between the following pension amounts at retirement:

| Legacy scheme: | or | Reformed scheme: |
|-----------------------------------|----|-----------------------------------|
| £5,710 pa (+ £17,130 lump sum) | | £6,570 pa (+ £17,130 lump sum) |

Assuming, for ease of comparison, that under the reformed scheme benefits, they would choose to give up pension for a lump sum equivalent to that they would have automatically received under the legacy scheme.

This means they would likely be **better off receiving reformed scheme benefits**.

Alternatively,

if the member **chose to retire aged 60**, then their final salary would be lower and the reformed scheme benefits would be reduced for early retirement. Their choice is now:

| Legacy scheme: | or | Reformed scheme: |
|-----------------------------------|----|-----------------------------------|
| £4,340 pa (+ £13,020 lump sum) | | £3,490 pa (+ £13,020 lump sum) |

This means they would likely be **better off receiving legacy scheme benefits**. Therefore, in this example, a change in retirement age has changed which scheme is expected to be more beneficial.

Example 3

A **teacher** who is a member of the **Teachers' Pension Scheme** (2015 scheme and Normal Pension Age 65 section).

In **2012 they were 50**, and so **did not receive transitional protection**¹. However, they will now be given a **choice of pension for their service over the remedy period**, of either:

| Legacy scheme (NPA 65) | or | Reformed scheme |
|----------------------------------------------------------------------------------------------------|----|---------------------------------------------------------------------------------------------------------------------------|
| 1/60 th of final salary each year Optional lump sum Payable unreduced from age 65 | | 1/57 th of revalued salary each year Optional lump sum Payable unreduced from State Pension age (age 67) |

If they had a **salary of £40,000 in 2015**, experience future annual **salary increases of 2% above inflation** and **retire at their State Pension age (67)**, their choice with respect to the remedy period will be between the following pension amounts at retirement:

| Legacy scheme: | or | Reformed scheme: |
|----------------|----|------------------|
| £8,160 pa | | £8,000 pa |

Assuming they choose to not give up any pension for a lump sum and allowing for the legacy scheme benefits being increased for late retirement.

This means they would likely be **better off receiving legacy scheme benefits**, although the outcomes are quite similar. This differs from the equivalent member in the NPA 60 section (Example 2), primarily because pensions are increased for late payment in the NPA 65 section but not in the NPA 60 section.

Alternatively,

if the member **chose to retire aged 65**, then their final salary would be lower, reformed scheme benefits would be reduced for the earlier retirement and legacy scheme benefits would not be increased for late payment. Their choice is now:

| Legacy scheme: | or | Reformed scheme: |
|----------------|----|------------------|
| £7,050 pa | | £7,010 pa |

This means again that they would likely be marginally **better off receiving legacy scheme benefits**. Unlike the NPA 60 section (as set out in Example 2), **expected retirement age** for the NPA 65 section has minimal impact on the relative difference in pension amounts between schemes.

¹ Despite being the same age, this member did not receive transitional protection like the member in Example 2 did, due to their later normal pension age of 65.

Example 4

A **civil servant Administrative Officer** who is a member of the **civil service pension scheme** (Alpha and Premium section of PCSPS).

In 2012 they were 25, and so **did not receive transitional protection**. However, they will now be given a **choice of pension for their service over the remedy period**, of either:

| Legacy scheme (Premium section) | or | Reformed scheme (Alpha) |
|----------------------------------------------------------------------------------------------------|----|--------------------------------------------------------------------------------------------------------------|
| 1/60 th of final salary each year Optional lump sum Payable unreduced from age 60 | | 2.32% of revalued salary each year Optional lump sum Payable unreduced from State Pension age (age 68) |

If they had a **salary of £20,000 in 2015**, experience future annual **salary increases of 2% above inflation** and **retire at their State Pension age (68)**, their choice with respect to the remedy period will be between the following pension amounts at retirement:

| Legacy scheme: | or | Reformed scheme: |
|----------------|----|------------------|
| £10,560 pa | | £7,460 pa |

Assuming they choose to not give up any pension for a lump sum.

This means they would likely be **better off receiving legacy scheme benefits**.

Alternatively,

If the member experienced future annual **salary increases of 0.75% above inflation**, then their choice if retiring at age 68 now becomes, either:

| Legacy scheme: | or | Reformed scheme: |
|----------------|----|------------------|
| £6,590 pa | | £7,190 pa |

This means they would likely be **better off receiving reformed scheme benefits**.

However, if they instead **retire aged 60**, they would likely be **better off instead receiving legacy scheme benefits** as the reformed scheme pension would be reduced for early payment.

This demonstrates that a change in future salary increases and/or retirement age can change which scheme is expected to be more beneficial.

Example 5

A **police constable** who is a member of the **Police scheme** (2015 scheme and 1987 section).

In 2012 they were 35, and so **did not receive transitional protection**. However, they will now be given a **choice of pension for their service over the remedy period**, of either:

| Legacy scheme (1987 section) | or | Reformed scheme |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|-------------------------------------------------------------------------------------------|
| 1/60 th of final salary each year for first 20 years, then 2/60 th for next 10 years [†] Optional lump sum Payable unreduced from age 55 or earlier depending on service | | 1/55.3 of revalued salary each year Optional lump sum Payable unreduced from age 60 |

[†] In practice, a member who has 30 years service (including in the reformed scheme) will have earned 1/45th of final salary for each year under the legacy scheme.

If they had a **salary of £30,000 in 2015**, experience future annual **salary increases of 2% above inflation** and **retire at 55**, their choice with respect to the remedy period will be between the following pension amounts at retirement:

| Legacy scheme: | or | Reformed scheme: |
|----------------|----|------------------|
| £8,570 pa | | £5,190 pa |

Assuming they choose to not give up any pension for a lump sum and allowing for the reformed scheme benefits being reduced for early retirement.

This means they would likely be **better off receiving legacy scheme benefits**.

Alternatively,

if the member experienced future annual **salary increases of 1% above inflation**. Their choice now becomes, either:

| Legacy scheme: | or | Reformed scheme: |
|----------------|----|------------------|
| £7,340 pa | | £5,040 pa |

This means again they would likely be **better off receiving legacy scheme benefits**.

Even at lower levels of future salary increases the legacy scheme pension is still comfortably higher than the reformed scheme pension.

Annex D

Glossary of terms

Abatement - The reduction or suspension of a pension in payment. Where abatement applies and post-retirement pension plus relevant earnings exceed pre-retirement salary, any excess will be deducted (abated) from the pension in payment.

Accrual rate – This rate is set out in a pension scheme's regulations and determines how quickly a member's pension grows. Most are written in the form of $1/n$ (where n is a figure such as 50 or 60) multiplied by pensionable pay and in those cases the smaller the rate, the more valuable it is. However, some are expressed as percentages of pensionable pay, such as 1.6% or 2.0%, where the higher the percentage the more valuable it is.

Active member - Members who are working (in pensionable service) and accruing additional pension benefits from that work and from contributions paid by their employer on their behalf. In most cases the member is also making contributions.

Actuarial valuation - A report of the financial position of a defined benefit pension scheme carried out by an actuary at regular intervals. The valuation report typically sets out the scheme's assets and liabilities as at the date of the valuation; the rate at which the sponsoring employer(s) must contribute to meet the liabilities accruing as they become due; and the additional rate at which the employer(s) must contribute to eradicate any deficit (the excess of liabilities over assets) within a stated time period.

Added or additional pension (AP) - Available in some legacy and reformed schemes allowing members to purchase additional amounts of pension (employers can also contribute as well as or on behalf of the member).

Added years (AY) - Contracts available in some legacy schemes allowing members to purchase additional years of service.

Annual allowance - A limit on an individual's annual tax-relieved pension accrual. The standard allowance is £40,000 for most people but is subject to a tapered reduction for those on the highest incomes. Further information can be found at <https://www.gov.uk/tax-on-your-private-pension/annual-allowance>.

Annual allowance charge - The tax charged at an individual's marginal rate of income tax on pension accrual above the annual allowance.

Annual Benefit Statements - The statement which members receive each year telling them how much their pension is worth.

Career Average Revalued Earnings (CARE) Scheme - A defined benefit pension scheme that gives individuals a pension based on a percentage of the salary earned

in each year of their working life. The annual “pot” is increased each year by a particular revaluation factor applied in that scheme.

Cash Equivalent Transfer Value (CETV) - A value placed on accrued pension rights in particular circumstances, such as when any worker ceases to be an active member of a scheme before pension is payable and wishes to transfer those pension rights to certain types of other pension scheme such as a private sector defined benefit scheme. Everyone can request a CETV except in the year before retirement, but schemes can refuse to accept them.

(The) Commission - The Independent Public Service Pensions Commission led by Lord Hutton of Furness from 2010 – 2011.

Commutation - Optional conversion of continuing pension into lump sum at a conversion rate offered by the pension scheme for that particular type of commutation of continuing benefit into lump sum. Reverse commutation is where some or all of a separately accruing pension lump sum can be converted into a continuing pension.

Consumer Prices Index (CPI) - An official measure of the cost of inflation, increasingly used for government purposes in recent decades. It examines some of the same things as RPI did, such as the weighted average of prices of a basket of consumer goods and services, such as transportation, food, and medical care. CPI has been regarded as more accurately measuring changes in overall prices than RPI.

Dashboards - Proposed online systems to allow pension scheme members to see all their pensions in one place. The government is legislating to establish pension dashboards in the Pension Schemes Bill, which is currently before Parliament.

Deferred choice underpin (DCU) - One of the options for removing unlawful discrimination identified by the Court. Formerly unprotected members would be returned to their legacy scheme for the remedy period (2015 – 2022). At the point benefits are payable they would be able to choose legacy or reformed scheme benefits for the remedy period.

Deferred member - A member who has stopped accruing extra benefits in their scheme, for example, after leaving employment covered by that scheme, or opting out of the scheme. No pension benefits have yet come into payment for the member from the scheme and the pension previously accrued is called a deferred or preserved pension.

Defined Benefit (DB) pension scheme - A pension scheme where the pension is related to the members’ salary or some other value fixed in advance.

Defined Contribution (DC) pension scheme - A scheme where the individual receives a pension based on the contributions made and the investment return that those contributions have produced. These are sometimes referred to as money purchase schemes.

Early retirement reduction buy out (ERRBO) - In the NHS Pension Scheme 2015, the method of a member and/or their employer paying additional contributions to buy out the actuarial reduction applied when a member retires earlier than their Normal Pension Age.

Effective pension age (EPA) - As per ERRBO above – but this relates to the 2015 pension scheme for civil servants (and others) (“Alpha”).

Employer Contribution Rates - The percentage of the salary of employees that employers pay as a contribution towards the employees’ pension.

Final salary scheme - A type of DB scheme that gives individuals a pension based on the number of years of pensionable service, the accrual rate and final salary as defined by the scheme.

Government Actuary’s Department (GAD) - A government department responsible for providing actuarial advice to public sector clients.

Guaranteed minimum pensions (GMP) - The minimum pension that occupational pension schemes have to provide for those employees who were contracted out of the State Earnings-Related Pension Scheme between 6 April 1978 and 5 April 1997.

Hutton report - The report(s) from The Independent Public Service Pensions Commission, led by Lord Hutton of Furness from 2010–2011.

Ill health retirement - A type of pension available to a member who meets the relevant test in scheme regulations when they are unable to continue working due to ill health.

Immediate choice - One of the options for removing unlawful discrimination identified by the court. Members would be asked which scheme they want to be a member of for the remedy period, shortly after 2022.

Indexation - Indexation is a technique to adjust pension payments by means of an index. It most often refers to the indexation of pensions in payment in line with a prices index in order to maintain the purchasing power of the pension after inflation.

Independent Public Service Pensions Commission - The independent commission undertaking a fundamental structural review of public service pension provision which commenced in 2010 and issued its final report in 2011. It was led by Lord Hutton of Furness.

Legacy scheme - The public service pension schemes members were in prior to 1 April 2015.

Life expectancy - Life expectancy at a given age, x , is the average number of years that a male or female aged x might be expected to live thereafter.

Lifetime allowance - A limit on the total amount of tax-relieved pension accrual an individual can have without incurring a lifetime allowance charge. Further information can be found at <https://www.gov.uk/tax-on-your-private-pension/lifetime-allowance>.

Lifetime allowance charge - The tax charged on an individual’s total pension accrual above the value of the lifetime allowance. An individual can either take this excess as a lump sum, in which case it is subject to a 55% tax charge, or as a regular pension payment, in which case the excess is subject to a 25% tax charge plus marginal rate income tax upon receipt.

Longevity - The length or duration of human life.

Lump sum - A specific payment made in respect of a member's pension rights. It can be an optional or mandatory pension lump sum payable to a member when a continuing retirement pension is brought into payment (often referred to as a pension commencement lump sum (PCLS)). Other lump sums are payable in respect of events such as death.

Member contributions - The percentage of their pensionable pay paid by active scheme members into their pension schemes.

Minimum Pension Age (MPA) - The earliest age at which ordinary retirement benefits can be brought into payment for a member under the rules of that scheme, and subject to tax limits. Ill health and survivor pensions are not subject to MPAs.

Money Purchase Additional Voluntary Contribution (AVC) - These are personal pension (money purchase) contributions made by someone who is also a member of an occupational scheme as a top-up to their occupational entitlement. These are defined contribution pensions.

New fair deal - HMT guidance on pension provision for workers whose employment is compulsorily transferred to the private sector when the services they work on are moved to private sector suppliers.

Normal Pension Age (NPA) - The age at which a pension scheme member can start taking pension benefits on a voluntary basis without any reductions. NPA is set in scheme rules. A member can retire voluntarily before NPA, as long as they are over their MPA, but will then face a reduction to their benefits.

Occupational pension - A pension, which is provided via the employer. It can be an unfunded arrangement in the public sector, where the pension promises are guaranteed under statute and there is no specific pot of assets allocated to meet the pension promises. However, in some of the public sector and in the private sector the pension scheme has to be legally separate from the employer, and backed by a specific pot of assets, and usually takes the form of a trust arrangement.

Pension credit - The main income-related social security benefit for pensioners, which combines the Guarantee Credit and the Savings Credit.

Pension Input Amount - The amount of an individual's annual pension accrual that is tested against the annual allowance to determine whether that individual is required to pay an annual allowance charge.

Pensioner member - Individuals who are drawing a pension and who are mainly former employees. However, they may also include widows, widowers and other dependants of former active members.

Public Sector Transfer Club - A group of some 120 salary related occupational pension schemes. It allows easier movement of staff mainly within the public sector. It does this by making sure that employees receive broadly equivalent credits when they transfer their pensionable service to their new scheme regardless of any increase in salary when they move to their new employment.

Public service pension schemes - Pension schemes authorised by statute where the relevant ministers or officials make the rules of the schemes. The main schemes are those for civil servants, the armed forces, NHS employees, teachers, local

government employees, the police and firefighters. There are over 200 public service pension schemes.

Reformed scheme(s) - The reformed public service pension schemes introduced under the Public Service Pensions Act 2013.

Remedy period - The period covered by the proposals in Chapter 2, that is 1 April 2015 – 31 March 2022.

Remuneration - The combined value of pay, pensions and other benefits that can be given a monetary value.

Retail Prices Index (RPI) - The old measurement of inflation but still published as it continues to be used to calculate price increases and indexation for certain purposes. Like CPI, RPI tracks changes in the cost of a fixed basket of goods over time, but the basket differs from CPI, as has the method of assessing overall inflation.

Scheme Pays - An arrangement that can be used in certain circumstances where an individual's annual allowance charge is paid by their scheme and the individual's pension benefits are reduced appropriately to reflect this.

State Pension age (SPA) - The age at which an individual can begin claiming their state pension. The ages vary between individuals with different birthdays.

Survivor benefits - When an active or pensioner member dies, each scheme has a range of benefits that dependent children, a spouse, civil partner and sometimes an unmarried partner may receive instead. These vary across schemes.

Tapered protection - Offered to members between 10 and 13.5 or 14 years of Normal Pension Age on 31 March 2012, meaning they could stay in their existing schemes for a period ranging from a few months to several years after 2015. As with transitional protection, this was found to be unlawful discrimination by the Courts.

The Pensions Regulator (tPR) – A non-departmental public body and the UK's regulator of workplace pension schemes. It aims to ensure that workplace pension schemes (including public service schemes) are run properly so that people can save safely for their later years.

Transitional protection – Given to members within 10 years of Normal Pension Age on 31 March 2012, it meant they remained in their existing (legacy) scheme. This was found to be unlawful discrimination by the courts.

Unprotected members – All members who were moved to the reformed schemes on 1 April 2015, or anyone who first joined their pension scheme after 1 April 2015 and therefore entered the reformed schemes.

Whole of Government Accounts (WGA) - Consolidates the audited accounts of over 8,000 organisations across the public sector in order to produce a comprehensive, accounts-based picture of the financial position of the UK public sector.

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This document can be downloaded from
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