

DoF Consultation response on the proposed removal of discrimination in Public Sector Pensions Schemes

KEY MESSAGES

In 2015, the reformed pension schemes were introduced across all the main public service workforces. The reforms included a policy of transitional protection that meant members closest to their Normal Pension Age (NPA) stayed in their legacy schemes. The courts later found this transitional protection to be discriminatory against younger members in the judicial and firefighters' pension schemes.

The Department of Finance (DOF) ran a public consultation in August 2020 to gather stakeholder views on two final policy proposals. This response sets out how DoF proposes to remove the discrimination identified by the courts in the way that the 2015 reforms were introduced for some members.

It has been decided that affected members will receive a “*deferred choice underpin*” of which pension scheme benefits they would prefer to take at the point they retire. This means individuals who were members of a public service scheme immediately before 1 April 2012 and who subsequently moved into the reformed pension schemes on or after 1 April 2015, will be placed back into their legacy pension scheme in relation to any continuous period of service up to 31 March 2022.

All members with relevant service in the legacy schemes between 1 April 2015 and 31 March 2022 will be able to choose to receive legacy pension scheme¹ benefits, or benefits equivalent to those available under the 2015 reformed pension scheme², for service between 1 April 2015 until 31 March 2022. Not all members will be better off in the legacy schemes, so it is important that individual members can choose which scheme benefits they want to receive.

DoF has been working to address the discrimination. Simply to put all members back into their legacy schemes to remove the discrimination, as that would leave some members worse off – particularly lower or middle earners who are often better off in the reformed schemes. Therefore, the final policy design needs to allow members a choice of which scheme is better for them. . Individuals will be provided with information to inform their choice.

Where individuals retire from the reformed schemes before the introduction of the “*deferred choice underpin*”, schemes will seek to offer a choice of benefits for the 2015 to 2022 period at retirement, where this is possible. In time, it may be possible for schemes to revisit cases of reformed scheme members who have already retired ahead of the introduction of the DCU. However, there are still some complex issues to be resolved before schemes are in a position to process these cases. Further details of this will be provided in due course.

¹ Legacy schemes for the police include the 1988 police pension scheme and the 2006 pension scheme.

² Reformed scheme for police is the 2015 Police pension scheme.

From 1 April 2022, all those who continue in service will do so as members of the reformed schemes regardless of age meaning all members will be treated equally, in terms of which pension scheme they are a member of.

In a related measure, the impact of any ceiling breaches that arise as part of the 2016 cost control valuations will be waived. Pending the outcome of the Government Actuary Department's review of the mechanism, it would be inappropriate to reduce member benefits based on a mechanism that may not be working as intended. However, any benefit increases due as a result of any floor breaches will be delivered. This means that no member will see a reduction in benefits as a result of the 2016 valuations.

FAQ's - What DoF announced

DoF public consultation response

DoF has today published a response to the consultation on proposals to remove the discrimination identified in the McCloud/Sargeant litigation, via a deferred choice underpin (DCU).

The public service pension scheme consultation response sets out two key decisions:-

1. Moving forward, at the point benefits are paid, e.g. at retirement, eligible members will be able to choose to receive legacy pension scheme benefits or benefits equivalent to those available under the reformed pension scheme for service between 2015 and 2022 (DCU). Not all members are better off in the legacy schemes, so it is important that individual members can choose which scheme benefits they want to receive.
2. From 1 April 2022, all those who continue in service will do so as members of the reformed schemes, regardless of age, meaning all members will be treated equally, in terms of which pension scheme they are a member of.

Read the details on the DoF consultation response [\[insert link\]](#).

FAQ's on the consultation response

1. Why the reforms to the main public service pension schemes led to discrimination?

Following negotiations with groups representing workforces, the 2015 public service pension scheme reforms included a policy of transitional protection. This meant members closest to retirement stayed in their legacy scheme as they had the least amount of time to prepare for the changes.

The courts later found this policy to be discriminatory against younger members in some schemes. Following the ruling, DoF confirmed that it would take steps to address the discrimination in all affected public service schemes.

2. Members need to submit a legal claim to receive any pension changes to address the discrimination identified by the courts.

No, members do not need to submit a legal claim to receive any pension changes addressing the discrimination.

Any changes will be applied across the main public service pension schemes and so both claimants and non-claimants who are eligible members will receive the pension changes.

3. What steps have been taken so far to address the discrimination?

Since the judgment, work has been ongoing on different options to address the discrimination.

DoF set out two proposals in a public consultation in August 2020 to gather views on which proposal would be better to remove the discrimination.

Since the public consultation closed in November 2020, the Department of Finance been working through all the responses and has now published its response setting out its final policy decisions. The discrimination will be addressed through a '*deferred choice underpin*'. This will allow eligible members a choice when they retire, as to which pension scheme benefits they would prefer to take for the remedy period.

4. What is a deferred choice underpin (DCU) and why has this approach been chosen?

To address the discrimination identified by the courts, eligible members who were moved to the 2015 police pension scheme, on 1st April 2015 (or later if they had tapered protection) will be moved back into their legacy pension scheme for the period during which the discrimination occurred, between 1 April 2015 and 31 March 2022.

When those members, (or members who were originally protected), reach retirement, they will then receive a choice of which pension scheme benefits they would prefer to take for the period. This is called a '*deferred choice*'.

The choice will be between the member's legacy pension scheme benefits and the 2015 reformed pension scheme benefits.

Deferring the choice until the point benefits are paid allows individuals to make their choice of which police pension scheme benefits are better for them, based on facts and known circumstances as opposed to assumptions on their future careers, health, retirement and other factors. The level of both pension scheme benefits will be known at retirement.

5. Who is in scope for these pension changes and so will receive the '*deferred choice underpin*'?

Individuals that meet the following criteria are in scope of the changes:

- Were members, or eligible to be members, of a public service pension scheme on 31 March 2012;

- Were members of a public service pension scheme between 1 April 2015 and 31 March 2022; and
- The two periods above were continuous (or treated as continuous under the scheme regulations, including those with a qualifying break in service of less than 5 years).

6. Why members are being asked to make a choice between their legacy and reformed pension scheme benefits?

The differences between the legacy and reformed pension schemes mean the set of benefits that is best for members depends on personal circumstances and preferences. This is why the remedy is providing members with a choice, to ensure they can choose which scheme benefits are better for them.

At retirement, schemes will provide information to members setting out their entitlement under both options, so members will have a clear understanding of the benefits available to them.

7. Why isn't the remedy solution just returning everyone to their old schemes?

The remedy cannot simply place all members into their legacy scheme without allowing them access to their reformed scheme benefits, because some members are better off in the reformed schemes.

8. What are the differences between the legacy and reformed schemes?

All public service pension schemes have different arrangements. However, the main changes between the legacy and reformed schemes for most schemes included a change to career-average pension schemes from final salary and an increase in normal pension age.

The change to career-average means members' pensions are now calculated on their average salary throughout their career as opposed to their final salary.

The reformed schemes were designed to make public service pensions more affordable and sustainable for the future, while still ensuring public servants received appropriate pension provision in retirement. The reforms created a fairer system. Although some members are better off in legacy schemes, including many police members, the reformed schemes are more beneficial for others, particularly many lower paid members.

9. Members who had 'tapered protection' also be asked to choose between legacy and reformed scheme benefits.

Members who received tapered protection in 2015, or would have received such protection but for the provision that unlawfully excluded younger members from transitional protection, will be offered a choice of whether to receive legacy or reformed scheme benefits in relation to any continuous service between 1 April 2015 and 31 March 2022.

This will remove the discrimination that arose between older members who were subject to transitional protection and younger members who were not.

10. How people who retire before the introduction of the “*deferred choice underpin*” will be treated?

Members who have retired before the “*deferred choice underpin*” is implemented and have a period of relevant service between 1 April 2015 and 31 March 2022 will be offered a choice once the legislative changes have been made to implement the deferred choice underpin. The choice will be retrospective and backdated to the point that payment of pension benefits began.

In some cases, it may be possible for schemes to offer members a choice before the deferred choice underpin is implemented.

However, the legislation that allows schemes to do this is limited in effect. It allows schemes to return eligible members who retired from the reformed schemes to the legacy schemes in relation to service after 1 April 2015 but does not allow for all consequential matters to be dealt with satisfactorily, in all cases.

For example: in cases where there are interactions with the tax system, perhaps where members have incurred or will incur tax charges or where contributions differ between the schemes, it might not be possible to address all these issues before new legislation is made to implement the deferred choice underpin.

Where possible, schemes will seek to offer reformed scheme members who retire before October 2023 a choice of legacy or reformed scheme benefits for the relevant period at retirement.

In due course, it may be possible for schemes to revisit cases of reformed scheme members who have already retired ahead of the introduction of the deferred choice underpin.

However, there are still some complex issues to be resolved before schemes are in a position to process cases - further details will be provided as soon as possible.

In all cases, where an individual receives a revised pension award, this will be backdated to the date that their pension award relating to the remedy period was originally made.

11. Will the survivors of eligible members who have died since 1 April 2015 also be asked to make a choice between the different pension schemes?

Where an eligible member has died since 1 April 2015, schemes will review these cases as a priority. Where the member retired from the reformed scheme, schemes will seek to revisit cases ahead of the introduction of the “*deferred choice underpin*” where this is possible. Individual schemes will check whether a higher pension or lump sum amount would be due under the alternative scheme.

In the case of any increase, schemes will inform surviving beneficiaries, and the higher amount will be paid with their agreement. If the higher amount is already in payment, the survivors will be notified.

The choice between benefits will fall to the late member's surviving spouse or partner. Where the child and decision maker live in the same household, the usual rules around total survivor benefits payable will apply.

If there are children also in receipt of a survivor pension, and the decision maker lives in a separate household to the child, any decision taken will not affect the child's pension.

12. What was the other proposal set out in the consultation and why was this approach not chosen?

The other proposal set out in the consultation was called an '*immediate choice*' which would allow members to choose which pension scheme benefits they would prefer to take for the period between 2015 and 2022 soon after the point at which schemes implemented the changes.

While this approach would have resolved the issue sooner and provided individuals with more certainty around pension benefits, it would have placed higher risk on the member. This is because they would be basing their choice around assumptions on their future careers, health, retirement and other factors, rather than the facts and known circumstances that will apply at the point of retirement. This could have meant that some members may have been much more likely to have chosen the scheme benefits that did not turn out to be the most beneficial for them.

13. Why the period when members will be receiving a choice of which pension scheme benefits they would prefer is only between 2015 and 2022?

Members will receive a choice for the period between 2015 and 2022 because 1 April 2015 is the date when the reforms were introduced, and 31 March 2022 will be the point at which the legacy schemes will be closed to future accrual.

Details about future pension provision

14. What pension scheme will individuals will be a member of from 1 April 2022?

From 1 April 2022, all those who continue in service will be eligible to do so as members of their respective reformed pension schemes (i.e. those introduced in 2015, of which many are already members), regardless of age. This includes members who were previously covered by 'transitional protection'.

This means that members will keep any service earned within the legacy schemes up until that date and will be able to access those benefits in the same way and at the same time, as they are currently able to, but any pension benefits earned after will be within the reformed pension schemes.

The legacy schemes will be closed to future accrual from April 2022.

15. Will all members be in the reformed pension schemes from 1 April 2022?

The reasoning behind the 2015 reforms remain. The commitment to ensuring generous public service pension provision remains. The 2015 schemes that were introduced following the recommendations of the Independent Public Service Pensions Commission (the reformed schemes) offer generous pension provision, improve affordability and sustainability, and are fairer to lower and middle earners.

The reformed schemes are some of the most generous available in the UK: backed by the taxpayer; index-linked; and offering guaranteed benefits on retirement; comparing very favourably to the typical private sector scheme.

The reforms created a fairer system. The move from (mostly) final salary to career average pension means members accrue their pension at a typically higher annual rate based on their average salary in most of the public sector pension schemes. Although some members are better off in legacy schemes, the reformed schemes are more beneficial for others, particularly many lower paid members.

The transitional protection policy, which gave rise to discrimination, will have been removed and, from 1 April 2022, all those who remain in service will do so as members of the reformed schemes, treating everyone equally in this respect, and ensuring the aims of the 2015 reforms are met.

Post consultation response

16. Next steps following the consultation response

Following the consultation response, the new legislation will be introduced as and when assembly/parliamentary time allows. It is the intention to have the provisions for the deferred choice underpin will be implemented by 1 October 2023 or earlier where schemes are able to implement legislative changes and processes ahead of that date.

17. The next steps for the police pension scheme

Before new legislation can be introduced, several remaining technical policy decisions on the overarching approach will be taken, including around inter-reactions with tax. However, it is intended that legislation to move people to the reformed schemes will take effect on 1 April 2022.

Scheme specific policy decisions will also be taken and necessary legislation drafted. The Department of Justice will engage with stakeholders including the Police Scheme Advisory Board during this process.

Following the publication of the consultation response and in parallel to introducing new legislation, the Department of Justice will engage with the Policing Board (in its role as scheme manager) and PSNI pension administrators to allow them to prepare for implementation of the deferred choice underpin. The changes will be implemented by October 2023.

18. When the pension changes will be implemented and introduced?

Legislation is necessary to implement a deferred choice underpin in the schemes, but there is a commitment to ensuring that all eligible members are treated equally and are able to choose to receive pension scheme benefits from either scheme. Where necessary, payments will be backdated to 2015.

Provisions for the deferred choice will be implemented by 1 October 2023 for all members. Schemes may implement provisions for deferred choice earlier where it is possible to do so. Where possible, schemes will also seek to offer a choice to members of the reformed schemes who retire before October 2023 before the legislation is implemented.

Information on additional areas

19. Will these pension changes result in any tax changes for members?

The majority of members will see no change to their tax position over the remedy period. For a minority of members, the pension changes will cause their tax position to change, which could result in tax charges for the member, or the member becoming entitled to a reimbursement of tax previously paid.

In some cases, the pension changes may mean that individuals will have to pay new or higher annual allowance charges, but typically only where their projected pension at retirement has increased. Adjustments to lifetime allowance charges may also be required, where retired members' accrual changes.

Some members may also face changes in their contributions in respect of the remedy period, which may also affect their income tax position.

Where a member has already retired, a member's total pension income may also change, and tax will be payable on any increase in pension.

20. What this announcement means for taper protected members

Members who received tapered protection in 2015 will be offered a choice of whether to receive legacy or reformed scheme benefits for the entire period of 1 April 2015 to 1 April 2022 (or their retirement date, if earlier).

This is consistent with the court judgment that discrimination applied to all of those who did not receive full transitional protection.

21. Can a member still retire after 30 years of service?

Since the legacy schemes have a lower Normal Pension Age (NPA) than the reformed schemes, members who have accrued service in both types of scheme may choose to retire when they reach that NPA and the relevant Minimum Pension Age (MPA) has been reached to access the relevant pension benefits from both schemes. They will not have to wait until

the NPA in the reformed scheme, which in most schemes is linked to State Pension Age (SPA)”.

For the police pension scheme, this means that individuals can still retire after 30 years’ service, subject to the normal rules.

22. Ill Health Retirement cases

Addressing Ill Health Retirement cases is set out in the consultation response in Annex A. Due to a number of complexities, it may not be possible to resolve cases, until after the “*deferred choice underpin*” and supporting legislation are in place.

23. Whether COVID-19 has affected the project

COVID-19 has not caused any major delays to the project timeline.