

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

Response to the consultation

February 2021



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Contents

<u>Executive summary</u>		1 - 3
<u>Chapter 1</u>	Introduction	4 - 8
<u>Chapter 2</u>	Removing discrimination in the remedy period	9 - 23
<u>Chapter 3</u>	Removing discrimination for future pension provision	24 - 28
<u>Annex A</u>	Response to technical questions	29 - 39
<u>Annex B</u>	Glossary of terms	40 - 45

Executive summary

Between 19 August and 18 November 2020, the Department of Finance consulted on proposed changes to the transitional arrangements to the reformed public service pension schemes introduced in 2015. These changes are required as a consequence of a legal ruling in 2018 by the Court of Appeal in England and Wales. That ruling found that the transitional protection arrangements, which allowed certain older members of the pre-2015 judicial and firefighters' pension schemes to remain in those schemes when other members were moved to the reformed schemes, gave rise to unlawful age discrimination against younger members in those schemes and must be remedied¹. In July 2019, the Westminster government accepted that other public service schemes with similar age based transitional arrangements would also require to be remedied². The devolved schemes established under the Public Service Pensions Act (Northern Ireland) 2014³ contain similar age based transitional protections and must be similarly remedied. The schemes in scope of this consultation were those established under the Public Service Pensions Act (Northern Ireland) 2014 for civil servants; teachers; health and social care workers; police, and firefighters. Separate consultations were applied for the schemes for local government workers and the devolved judiciary.

Consultation aim

The consultation proposed to address the unlawful age discrimination by providing eligible scheme members with a choice for how their pension entitlements will be calculated for service during the period unlawful discrimination has occurred. This 'remedy period' is from 1 April 2015 to 31 March 2022. The provision of this choice is designed to take account of the fact that many members will actually be better off in the new schemes for their remedy period service. All eligible members can therefore choose which set of scheme rules suits their individual circumstances for that period of service.

The consultation invited views on 2 options for when the choice of how remedy benefits are calculated should be made: 1) immediately after the remedy period is closed (immediate choice); or 2) deferred until the point of retirement/immediately prior to the pension becoming payable (deferred choice underpin).

Views were also sought on whether the proposed approach to remove unlawful discrimination for the future, through accrual of all future service from 1 April 2022 only in the reformed scheme arrangements, ensured all members are treated equally.

Finally, the consultation considered associated issues where the remedy proposals would interact with existing scheme provision.

¹ *Lord Chancellor and another v McCloud and others, Secretary of State for the Home Department v Sargeant and others* [2018] EWCA Civ 2844.

² <https://questions-statements.parliament.uk/written-statements/detail/2019-07-15/hcws1725>

³ [Public Service Pensions Act \(Northern Ireland\) 2014 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2014/12)

The consultation proposals were identical to those contained in a Treasury consultation to address age discrimination in the transitional arrangements to the equivalent, public service schemes in Britain, and which took place during summer of 2020. The transitional protection arrangements in devolved public service schemes are identical to those in the equivalent schemes in Britain. Department of Finance officials worked closely with the Treasury and policy representatives from schemes across the UK, including those in NI, in the development of a core policy response which can address the issue of discrimination as it applies across affected schemes.

Consultation outcome

The Department of Finance received 443 responses to the consultation. This included views across a variety of sources, including private individuals; trade union groupings; employers; administrators, and other representative organisations.

Immediate choice & deferred choice underpin

The majority of respondents to the consultation who expressed an explicit preference supported the deferred choice underpin (DCU) option over the immediate choice underpin (IC). Most respondents felt DCU provided eligible members with more certainty about their actual benefit entitlements based on factual information about earnings, personal circumstances and future plans, at their chosen point of retirement. In contrast, respondents were concerned that the higher level of uncertainty and unavoidable assumption-making about these same circumstances which the IC option inevitably involves, would effect an unacceptable high level of risk of members' making ill-informed or wrong decisions based on incomplete available information. The range of views provided in support of DCU is considered more fully in Chapter 2.

Having considered all the responses to the consultation the Department of Finance proposes to proceed with the DCU. This means that eligible members would make their decision on whether remedy period benefits are calculated under reformed or legacy scheme rules immediately before their chosen point of retirement, or when benefits are due to be paid from the scheme. Until that choice is made, members would be deemed technically to have accrued remedy period benefits in their legacy schemes, rather than reformed schemes, during the remedy period.

This choice will be available to all active, deferred or pensioner 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, in a public service scheme in scope of the consultation. This will also be irrespective of whether they have submitted a legal claim or not. Members who have already retired and/or received a pension award will be asked to make their choice as soon as is practicable and their choice will be applied retrospectively back to the date their original award was made.

Pension provision for future service

On the question of ensuring equality of treatment after 31 March 2022 some respondents agreed the proposal that all members only accrue service in the reformed schemes from

the end of the remedy period was the fairest way to ensure the unlawful difference of treatment on grounds of age was removed. Other respondents considered that this approach would not completely remove discrimination and members who were previously transitionally protected should instead be allowed to remain in their legacy schemes indefinitely. However, in many cases reasoning provided did not demonstrate how this would better resolve the unlawful discrimination. The range of views on future treatment is explored more fully at Chapter 3.

Having considered all the responses received on this issue the Department of Finance intends to proceed with the proposed approach that at the end of the remedy period all active scheme members should accrue future service only in the reformed schemes. This approach ensures that all members are treated equally in respect of the scheme design available to them after the foregoing discrimination has been addressed. It would be unfair and would perpetuate the unlawful discrimination if some members, of the public sector schemes and not others, continue to be in the legacy schemes after April 2022 as this difference in treatment would still be attributable to unjustified age-based criteria.

Whilst the courts have ruled the transitional protections gave rise to unlawful discrimination, the fundamental components of the 2015 reforms for career average scheme design and revised pension ages remain valid and appropriate for future service. These reforms were agreed by the Assembly, based on recommendations made by the Independent Public Service Pensions Commission for future pension arrangements that can be sustainable and affordable in the long term, and which are fair, both across the public service workforce and for the taxpayer.

Next steps

The Department of Finance will now take steps to progress the necessary changes to the Public Service Pensions Act (Northern Ireland) 2014 to remedy the discrimination that has occurred and to ensure it is ended prospectively for future service from 1 April 2022. These changes will also enable departments with responsibilities for the individual public service schemes to amend their scheme level regulations accordingly. The amendments required to scheme regulations will be the subject of further public consultation on a scheme by scheme basis, as appropriate.

The Department of Finance thanks all those individuals and organisations who submitted responses to the consultation. It will continue to engage with member and employer representatives of the workforces within scope of the consultation to ensure the successful implementation of the pension changes set out in this response.

Chapter 1

Introduction

Public service pension reform

- 1.1 On 8th March 2012, the NI Executive agreed to commit to the policy for a new career average revalued earnings (CARE) scheme model with pension age linked to state pension age to be adopted for general use in public service pension schemes.
- 1.2 The Executive committed to adopt this approach consistently for each of the different public sector pension schemes in line with the equivalent schemes in Britain and not to adopt different approaches for schemes here.
- 1.3 These reforms were based on the recommendations made by the Independent Public Service Pension Commission chaired by Lord Hutton of Furness. Lord Hutton's Commission had previously reported in October 2010 that the (then) current public service pension structure would require major reform to adequately respond to rising pension costs for employers and taxpayers which were associated with long term trends for increased longevity in recent decades. In its final report published in March 2011 the Hutton Commission recommended the replacement of final salary schemes by Career Average Revalued Earnings (CARE) schemes with normal pension age linked to State Pension Age, (SPA) (with exceptions for the schemes for police, fire and the armed forces). The Commission recommended that all active members should be moved to these new schemes for future service as soon as was practicable. The view of the Commission was that these reforms would make schemes more sustainable and fairer across their membership, including for lower and middle income members, and for the taxpayer⁴.
- 1.4 Following negotiations with member representatives in Britain, the Westminster government agreed to transitional measures which allow older scheme members to be exempt from the effects of the pension scheme reforms. This 'transitional protection' meant that members within 10 years of Normal Pension Age (NPA) could remain in their existing schemes, and members between 10 and 13.5 or 14 years of NPA would receive 'tapered protection'⁵ in the existing schemes for a period ranging

⁴ Final Report:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/207720/hutton_final_1003_11.pdf

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

⁵ All the devolved schemes have similar tapered protections apart from the Local Government Pension Scheme (Northern Ireland) (which is outside of the scope of this consultation, apart from the issue of certain transfer between the other schemes). 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.

from a few months to several years, proportional on their age, before moving to the reformed schemes. In line with the Executive agreement on pension reforms of March 2012 these transitional protections were also incorporated in the devolved policy for reformed public service schemes. The pension reform policy was subsequently given effect in the Public Service Pensions Act (Northern Ireland) 2014, as agreed by the Assembly on 4 February 2014⁶.

- 1.5 Following a Court of Appeal ruling⁷ in 2018 that transitional protections provided to older members of the judges' and firefighters' pension schemes amounted to unlawful discrimination⁷ the Westminster government confirmed action was also required to remedy the discrimination in other public service schemes which incorporated similar age based transitional protections. Legal advice confirmed that age discrimination also extended to the similarly constituted devolved schemes established under the Public Service Pensions Act (Northern Ireland) 2014 and these schemes would need to be similarly remedied.

Consultation

- 1.6 Between 19 August and 18 November 2020, the Department of Finance consulted on proposals to address the unlawful discrimination arising from the transitional arrangements in the devolved public service pension schemes.
- 1.7 The consultation proposals were identical to those in the equivalent Treasury consultation for schemes in Britain established under comparable Westminster legislation. The consultation proposals were developed in conjunction with the Treasury and with policy representatives from public schemes across the UK, including those here in NI. Given the analogous nature of pension provision between public service pension schemes here and in the similarly constituted comparable schemes in Britain a conjoined approach to core policy development in response to legal challenges across schemes has been taken to addressing the effects of the discrimination and risk of legal challenge across those schemes.
- 1.8 The consultation concerned the main public service pension schemes for civil servants; teachers; health and social care workers, police and firefighters.
- 1.9 The policy aim has been to remedy the discrimination that has occurred by providing 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. The consultation sought views on two options for when this choice should be made:

⁶ <http://www.niassembly.gov.uk/assembly-business/legislation/2011-2016-mandate/primary-legislation-current-bills/public-service-pensions-bill/>

⁷ Lord Chancellor and another v McCloud and others, Secretary of State for the Home Department v Sargeant and others [2018] EWCA Civ 2844.

- an immediate choice (IC) – made in the immediate period following the end of the remedy period in 2022, and
- a deferred choice underpin (DCU) – made immediately prior to the chosen point of retirement or when benefits are due for payment.

1.10 The consultation also sought views on how the approach to remove discrimination for the future through accrual of all service in reformed pension schemes from 1 April 2022, ensured equality of treatment.

1.11 As set out in the consultation document due to differences in the way transitional protection was provided in the Northern Ireland Local Government Pension Scheme the Department for Communities has undertaken a separate consultation on necessary changes to that scheme. The Department of Justice has also consulted separately on its proposed changes which reflect the particular circumstances of that scheme. In both cases the consultation proposals were identical to those contained in comparable consultations undertaken for equivalent local government and judicial schemes in Britain. Separate consultation responses will issue from each of those respective departments in due course.

Stakeholder engagement

1.12 During the consultation period, the Department of Finance engaged closely with both employer and employee representatives of scheme members in scope of these proposals at regular meetings of the Collective Consultation Working Group (CCWG), which is the recognised forum for consultation on public service pension policy issues. These sessions also allowed stakeholders to seek clarification on any of the aspects presented in the proposals. Most of the employee groupings who attended these events and some employer representatives have also provided formal written responses to the consultation.

Responses to the consultation

1.13 Consultees were asked to respond to a total of 24 questions. Responses to each question were considered in making final policy decisions, and in the drafting of this response. Not all consultation responses necessarily addressed the specific questions posed in the consultation document. However all responses have been considered appropriately in the formulation of this response.

1.14 There were 443 responses to the consultation. The breakdown of responses was as follows:

- 419 responses from individuals;
- 14 responses from trade union groups;
- 3 responses from Scheme Advisory Boards (SABs);

- 3 responses from organisations unaffiliated to Public Service Pensions;
- 2 responses from other employee representative organisations;
- 1 response from scheme administrator, and
- 1 response from an employer.

1.15 Employee representatives groups for each of the public service employments represented at the CCWG submitted responses, including a collective response from NIC-ICTU which is the composite trade union organisation which provides collective representation for the unionised employments in scope of the consultation.

1.16 There were 121 responses relating to workforce member campaigns. Of these, 44 members of the NI Teachers' Pension Scheme (TPS) submitted campaign responses. 77 campaign responses were received from HSC employees.

1.17 As shown in the graphs below a broad range of responses were received across the public sector employments in figures 1 and 2.

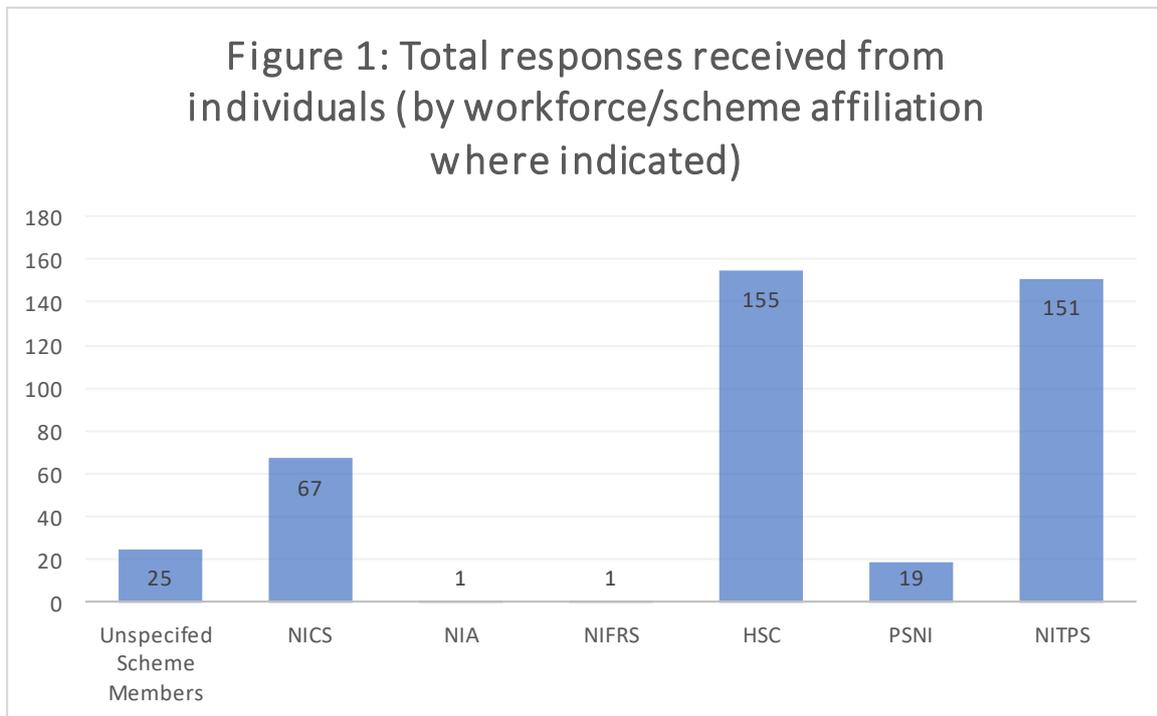
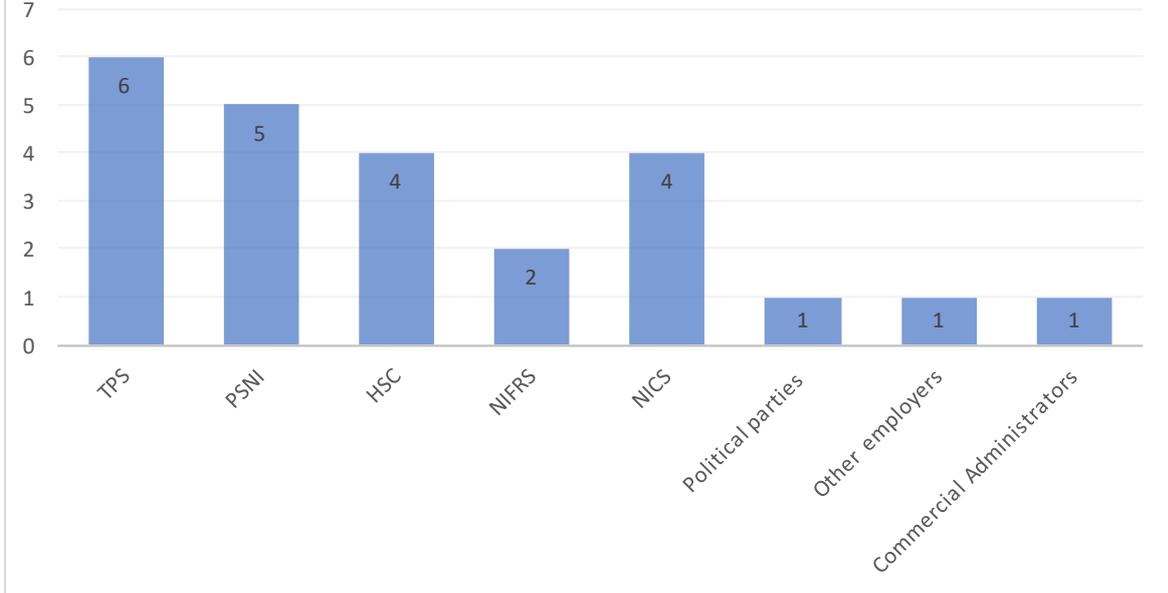


Figure 2: Total responses received from organisations (by workforce/scheme affiliation where indicated)



1.18 The analysis of the responses received for the main policy questions in relation to IC and DCU, as well as impacts on equalities, tapered protected members and on taxation, (questions 1-8, 24), have been set out in Chapter 2. The analysis in relation to future pension provisions (Question 9) has been detailed in Chapter 3. Detail concerning to the technical questions in the consultation (questions 10-23) are covered within Annex A.

Chapter 2

Removing discrimination in the remedy period

Equality impacts of proposals

- 2.1 Questions 1 & 2 of the consultation invited views and comments on the equality implications of the remedy proposals and asked respondents to provide additional relevant evidence. There were 55 responses to Q1 and 92 responses to Q2 and some respondents choose to answer both questions together. Respondents expressed views on a range of themes including: the definition of members in scope; the timing for when a choice is made (DCU vs IC); further scheme specific analyses, and the fairness of moving previously protected members to the reformed schemes for future service. There was a degree of crossover with responses received on other questions, particularly on questions 4-9. Not all responses made reference to the points for equality made in the published screening exercise.

Members in scope

- 2.2 The consultation defined members in scope of the remedy proposals as those who were in service on or before 31 March 2012 and who remained in service from 1 April 2015. It is this cohort, which the courts identified as being subject to the age discrimination. Some respondents to the consultation raised concerns about this approach.

“An issue arises as to the potential adverse impact on those who entered the schemes between 1 April 2012 and 31 March 2015”. - NIC-ICTU

- 2.3 Some individuals, particularly in the teachers’ pension scheme raised concerns for the treatment of younger members within this cohort.

“I believe these proposals have a significant impact on younger members of the scheme who joined after 1 April 2012. These members will not have access to final salary scheme benefits for the 2015-2022 period, may have expected improvements in the career average scheme taken from them, and will be invited to pay part of the bill for protection for their elders”. - Individual response

- 2.4 Organisational responses also referred to the impacts for certain characteristics, also previously acknowledged in the original screening exercise, of members who joined the schemes between 1 April 2012 and 31 March 2015.

“The equalities impact highlights that those outside of the proposed remedy are more likely to be younger, women and/or from ethnic minority groups”. “We understand the Department of Finance position is that those joining the scheme after 01 April 2012 were not discriminated against however we strongly suggest that the reasons for this are clearly set out for members and employers who will inevitably receive queries from their staff in this group.” - RCN

- 2.5 In its response the Police Federation was concerned that the rationale provided in the consultation for the treatment of this cohort appeared to rely disproportionately on the claim that those joining service after 2012 would have been aware of the forthcoming reforms, which were to subsequently take effect in 2015.

“PFNI have yet to be provided with any documentary evidence to support this assertion and consider that had it existed, the Department of Finance would have explicitly referenced it in this formal consultation”. - PFNI

DCU and IC

- 2.6 In addition to the scope of eligibility under the proposals equality issues were raised in relation to the choice between the IC and DCU options for the handling of remedy period benefits.
- 2.7 In its response the FBU noted that IC may have had more potential to incur future discrimination against younger firefighters who, due to their age, would need to take account of more long term assumptions about future variables for health and fitness; career progression, and personal and family plans and commitments, than older scheme members, as part of the decision making process. Conversely the DCU option could be seen as minimising adverse unequal effects between cohorts based on age.
- 2.8 Similar views on this issue were expressed by the FDA and the SAB for the HSC scheme.

“The younger the member, the more unknowable these things are. It can be argued that younger members are at a greater disadvantage under Immediate Choice as they will be required to make assumptions about unknowable things for a longer period of time”. - FDA

“Under the immediate choice approach, there is greater future uncertainty for younger members than older members due to the longer timeframe between the end of the remedy period and the end of their active membership”. - HSC SAB

Future Service

- 2.9 On the consultation aim of ensuring equality of treatment through all members accruing future service only in the reformed schemes from April 2022, there were concerns that the remedy proposal would not remove all discrimination.
- 2.10 In its response the NASUWT considered the remedy should address a perceived existing inequity in the reformed schemes whereby scheme members with a higher state pension age under state pension legislation now will automatically have a corresponding higher normal scheme pension age in contrast to their older colleagues.

“The proposals do not provide a permanent solution to the teachers’ pension age differentiated by age and are potentially discriminatory towards younger teachers who have a higher state and, therefore, teachers’ pension age”. - NASUWT

- 2.11 Some concerns were also raised, especially amongst stakeholders for the police pension scheme, that further indirect discrimination could be created against younger members who would be unable to gain a full complement of legacy benefits in the same way as an older colleague had, and who would have to work beyond their legacy scheme NPAs before being able to access their full reformed scheme benefits. The NI Policing Board commented further that:

“These will be mainly female workers whose part time service has impacted on their “reckonable/pensionable” service. The gender/ age profile of this cohort may give rise to claims for discrimination and therefore consideration should be given to identify an alternative outcome for these individuals”. - NIPB

- 2.12 A view was also expressed that the proposal to remedy the discrimination by moving all members to the reformed schemes for future service was itself as discriminatory on grounds of age as the original protections had been.

“The age discrimination within this new proposed remedy exactly mirrors the unlawful age discrimination within the transitional protections, and in many ways is more objectively clear, as it lacks even the veneer of justification that was present in the transitional protections case”. - CTU

Department of Finance response

- 2.13 The original Department of Finance equality screening document acknowledged that the proposals for members in scope of remedy may have potential indirect effects for some members within the s75 categories who joined service after 2012.
- 2.14 However, it is important to also acknowledge that the rationale for the remedy eligibility criteria set out in the consultation is based within the factual context of the court’s ruling which identified the unlawful discrimination inherent in the transitional protections was between those who were in service on 31 March 2012, and thus received full transitional protection excepting them from the reforms, and those who were in service within the same period but did not qualify for that exception on the basis of their age. It is on these conditions that the imperative to remove discrimination identified by the courts arises. Members who first joined any public service pension scheme after 31 March 2012 were ineligible for transitional protection regardless of any protected characteristics, and therefore were not subject to the age based discrimination identified by the courts. On this basis the Department of Finance believes that any indirect effects do not constitute a disproportionate or unjustified adverse impact on individuals with protected characteristics who were not affected by the original discrimination.
- 2.15 This is the main rationale for the consultation approach on scope of remedy. Contrary to some views expressed in the consultation the approach on eligibility does not rely on an assertion that the all individuals joining after 2012 would have been aware of the particular reforms being proposed for their particular scheme. Nevertheless it

remains the case also, that proposals to reform public service pensions were evidently within the public domain with the release and publication of the interim and final reports of the Hutton Commission in 2010 and 2011 respectively.⁸ The Commission's final report had recommended the UK wide adoption of these reforms. The reform proposals were then subsequently announced by the Westminster Government at Budget 2011, signalling they would form the basis for subsequent scheme changes to follow. Subsequently on 8 March 2012, the NI Executive also confirmed the same fundamental reforms would be applied for devolved schemes in the same way as for the equivalent schemes in Britain.

- 2.16 In this context information on the proposed reform of public service schemes had received significant exposure early in the policy development phase, and whether or not the precise date or terms of a likely or eventual change to an individual reformed scheme were also widely anticipated, is less relevant or material.
- 2.17 In light of the decision, for all the reasons set out in this response, to proceed with the DCU option for treatment of benefits in the remedy period, the Department of Finance is also now satisfied that any potential equality effects of the type identified by some respondents for the IC option (see above), will not now arise.
- 2.18 On the issue of future service the Department does not agree that moving previously protected members to the new scheme introduces any new unlawful difference in treatment of a type identified in the transitional protections by the courts.
- 2.19 The removal of the unlawful discrimination identified by the courts requires all members to be treated at least as if the original discriminatory provision had not occurred. The remedy achieves this. Whilst the courts have ruled the transitional protections give rise to unlawful discrimination, this does not extend to the fundamental components of the 2015 reforms for career average scheme design and revised pension ages. These reforms remain valid and appropriate for future service as agreed by the Assembly in 2014, to deliver sustainable future pension arrangements that are fairer across the public service, especially for lower and middle earners who represent the majority of that workforce.
- 2.20 The legacy schemes were not intended to remain open indefinitely, and without the deployment of age based transitional protections which provided a limited temporary exception now deemed unlawful, all members would likely already have been placed in the reformed schemes for future service at their inception without unlawful difference in treatment by reference to their age or any other characteristic.
- 2.21 The introduction of reformed schemes does affect different scheme members in different ways. For some the effects are they will not accrue a full complement of legacy benefits in the old schemes before moving to the reformed arrangements. They will nevertheless continue to have access to a generous defined benefit pension for future service under the now more equitable and sustainable reformed CARE scheme model approved already by the Assembly in 2014. Depending on their

⁸<https://www.gov.uk/government/publications/independent-public-service-pensions-commission-final-report-by-lord-hutton>

own career and personal life choices they can choose to remain in service until at least or beyond their new NPA within these schemes, and have options of accruing more benefits in total over a longer period of service. Alternatively if they wish, they can also choose to retire early with a combination of legacy and reformed scheme benefits, as long as there is an appropriate actuarial reduction to the CARE scheme component to allow for the fact that their pension would now be in payment for a longer period of time.

2.22 The Department set out its initial analysis of equality impacts of the remedy proposals in the screening document published alongside the consultation. This has now been updated following consideration of responses received to the consultation, with focus on the proposal for DCU which the consultation response now recommends. The screening exercise acknowledges some effects for some protected characteristics including for age and sex but concludes that these are indirect and do not have a disproportionate, unjustified, adverse effect in context of the legal imperative to remove the unlawful discrimination. The updated screening document has been and is available to view alongside this response as published on the Department of Finance website.

Other equality issues

2.23 A number of organisational respondents to the consultation proposed that attention should be given to further scheme level equality analyses of how the remedy proposals would affect the individual scheme workforces.⁹

2.24 Individual pension schemes will consult on the specific details of the implementation of these changes as part of their scheme level implementation plans, including consultations on draft regulations. The Department of Finance will consider any specific impacts of the detailed working-out of the policy for each scheme at that stage.

Tapered transitional protection

2.25 As part of the original transitional protections individual schemes permitted those members over 10 and up to 14 years from NPA on 31 March 2012 to remain in their legacy arrangement for a proportionately extended period before transitioning to the new schemes. This was known as tapered protection¹⁰. Being an age based difference in treatment tapered protection now also falls within the unlawful discrimination identified by the courts. Under the remedy proposals members who had tapered protection would be given the same choice as other remedy eligible individuals to have their remedy period benefits calculated under either legacy or reformed scheme rules. It was not proposed to provide any combination of the two arrangements as this would extend the unlawful discrimination.

⁹ This was raised by employee representative organisations for the fire scheme (FBU), teachers (NASUWT) and civil service (NIPSA), and also across multiple stakeholder responses for the police pension scheme.

¹⁰ All devolved schemes within the scope of the consultation introduced tapered protection, for members at least 10 to 13.5 years from NPA on 1 April 2012, for police and firefighters the period was between 10 and 14 years.

2.26 Q3 in the consultation invited comment on this approach, especially as to how any perceived adverse impacts could be mitigated. There were a total of 87 responses to this question.

2.27 The consultation document had acknowledged the possible scenario that for a limited number of taper protected individuals a combination of legacy and reformed scheme benefits could result in an outcome in the remedy period, which could be more advantageous. A variety of responses picked up this issue. Some respondents advocated a solution, which would effectively introduce an additional third option for tapered members.

“The NASUWT seeks a guarantee from the Department of Finance to this effect, which would confirm that, for any teachers in this position, they should receive the highest benefits which one of the following arrangements would provide: the legacy pension scheme; the 2015 pension scheme, or the tapering protection arrangements”. - NASUWT

2.28 Some organisational and individual responses acknowledged the difficulty that allowing an additional ‘third choice’ for this group would present, effectively perpetuating an unjustified age based inequity compared to those in the non-protected and previously fully protected groups:

“this would be giving these tapered members a choice not available to other members. Given the specific age range of these members, the alternative of giving them an extra choice could arguably be viewed as further age discrimination, opening the door to more legal action”. - NEU

2.29 Some respondents thought the possibility that some taper protected members would benefit from a combination of legacy and reformed benefits within the 7 year remedy period required further evidence but were also focused more on considerations of ‘legitimate expectation’.

“like those with full protection, tapered protection members have made financial decisions and life choices secure in the knowledge that their tapered protection will last until a given date before transfer into the reformed scheme. Instead it is proposed that all those who have tapered protection should lose it retrospectively for the seven-year period to 1 April 2022. This is unfair and a breach of the legitimate expectation of those who suffer disadvantage as a result.”- PSA and SANI

2.30 In its response on this issue the Fire Brigades Union expressed its concern that the approach proposed in the consultation may have been deployed mainly for reasons of expediency:

“the reasoning for the “one scheme for the remedy period” seems to be based entirely on perceived administrative burdens” - FBU

2.31 Other responses were more cognisant of the reality of the administrative challenges posed by any alternative approach to unravel the tapered protections in a way which would attempt to administer a third choice:

“While it may be conceivable that for a tiny minority the benefits from the tapered position are better than being in either scheme for the whole remedy period, the FDA recognises the absurd complexity of developing a universal solution. The implication would be giving everyone a choice between 7 years in legacy, 7 years in reformed, and many combinations of X years in legacy and Y years in reformed.”

- FDA

Department of Finance response

- 2.32 As set out in the consultation document, the circumstances in which a member would benefit from having a mix of legacy and reformed scheme benefits are expected to be very limited and affect a small number of individuals. For the majority of members whether they are better off in the legacy or reformed scheme in the remedy period will be the same for the whole of that period. In this context the Department remains of the view that anyone who might have benefitted from such a mix of benefits under the tapered protections would have done so by chance rather as a consequence of the targeted purpose of the transitional protections to enable those closest to retirement to remain in the legacy scheme for a longer period.
- 2.33 A third option to provide a ‘guarantee’ to tapered members, as suggested by some respondents, would also be prohibitively resource intensive and challenging for schemes to administer. More importantly it would remain problematic as it would still be determined by age based characteristics (i.e. provided to those only between 10 and 14 years of their legacy NPA), which would constitute a continuation of the now unlawful age-based difference in treatment. The fact that those with tapered protection will be over a certain age reflects the discriminatory nature of the original provision, and the Department does not consider that the retention of that discrimination would be justified. Viewed in this context the Department does not consider the act of removing this now discriminatory provision can in itself legitimately be construed as a valid claim for a new discrimination.
- 2.34 Having considered the responses provided the Department of Finance remains of the view that its proposed approach on handling tapered protection represents the most viable option to ensure age-based discrimination is comprehensively removed and in a way which reduces the risk of future legal challenge which could arise as a consequence of retaining an age related differential for previously taper protected individuals. Whilst there may be a retrospective affect for some taper protected members, it is important to affirm that the choices for members inherent in the remedy proposal to remove age discrimination still go beyond any alternative unilateral approach which would automatically return all members to their legacy arrangement for the duration of the remedy period. Under the remedy proposal those who would have benefitted from remaining in the legacy scheme for the whole remedy period will retain that option and those who would have been better off moving to the CARE arrangements immediately on 1 April 2015, i.e. had not been taper protected, will likewise now also have that choice.
- 2.35 The Department believes this represents the fairest method of treatment to return affected members to at least the position they would have been in had the transitional protections and age discrimination not occurred.

Proposals for removing discrimination IC, DCU and Administrative impacts

2.36 Questions 4 to 8 of the consultation document invited views on the detail set out on the options for IC or DCU for the handling of remedy period benefits. Respondents were asked which option was preferable to address the discrimination identified by the courts. Opinions were also requested on the administrative impacts of the proposals.

2.37 A variety of concerns were raised about the IC proposal. There was some acknowledgement of its potential benefits to members where IC could provide clarity or 'closure' by means of representing the quicker resolution to the McCloud issue in general. This could suit some members already close to retirement.

2.38 However, more respondents felt the IC option would preclude proper consideration of all the possible future career and life events that would ultimately determine the most advantageous and appropriate outcomes for most members:

“an Immediate Choice decision would be almost impossible for any staff with more than a few years left to retirement. There are too many unknown factors for an accurate decision to be made”. - Individual response

“Members will want clarity regarding their actual rather than hypothetical pension benefits and these can only be known for certain at the point of retirement”. - BMA

2.39 Some respondents considered the risk to members of being compelled to take important decisions about future benefits based on assumptions and projections many years in advance of actual retirement, and which could lead them to choose a scheme that is less beneficial for them, in itself posed a significant future legal risk for responsible departments.

“because it risks members making a decision that is not the best one, in a situation that they could argue they had not caused, and because they might then seek to argue that they were induced to make the wrong decision”. - NIW

2.40 The timescales proposed to progress an IC remedy solution were also considered by some respondents to be too restrictive to ensure all eligible members could be provided with the adequate time, tools and information to inform knowledgeable decision making. Many individual responses, and also some administrators highlighted the crucial importance of accurate information from schemes, including the availability of online modellers and calculators, (as the consultation document had proposed). However, they also raised significant doubts on the feasibility that adequately robust systems and processes could be in place in line with the constricted timescales associated with the IC option.

“The proposal states that online calculations will be made available to assist members in making their choice. It has not been suggested who will provide these tools. If it is to be software providers, there are concerns that 2022 is too tight a timeline for these to be implemented.” - Aquila Heywood.

2.41 Anticipated pressures for other resources such as ready access to independent financial services, was also a feature of concerns about the timeframes associated with the IC option. With so many individuals seeking services from registered independent financial advisors within the same relatively contracted period there is a real risk not all may be able to source a reliable authorised service. This issue was a prominent one raised in campaign responses received from the teachers' sector.

2.42 Other respondents commented on logistical risks that scheme members with deferred entitlements could prove difficult to trace and might also be disadvantaged if unable to record a valid choice in the timeframes available under IC.

2.43 The effect of unknown future career events and decisions was also highlighted as a factor which exposed potentially serious flaws in the IC proposal, especially where those events and decisions could have a significant effect on whether Final Salary or CARE benefits would be more advantageous for any scheme member at the eventual point of retirement.

“if career plans change, there is a significant risk that a member may have chosen an option under immediate choice that results in them receiving a lower benefit than if they were able to make the choice at the point of retirement.” - BMA

2.44 From the 443 responses to the consultation, of those who gave an explicit preference between the two options proposed. 61.4% preferred the DCU option and only 2.93 % preferred the IC. Whilst 35.67% of respondents did not express an explicit preference many of these nevertheless raised the same concerns about IC which have been set out above.

2.45 Those who expressed a preference for DCU over IC reasoned that it better enables members to make more informed decisions at retirement based on factual information rather than be resigned to irrevocable and possibly inaccurate projections about their future circumstances.

“This was considered to be the most sensible safe option as members will be able to select remedy period benefits with the benefit of hindsight, rather than having to make significant assumptions about their future career and retirement plans which may not be borne out in reality”. - RCN

2.46 This rationale was also reflected in the very real world concerns expressed by some individual scheme members:

“the only option is the deferred choice underpin as I don't know for certain what my future salary will be or when I will retire. Consequently, I am concerned that I will make the wrong choice and potentially end up with a lower pension under the immediate choice proposal”. - Individual (Campaign response from individual)

2.47 As well as reducing the potential for members making ill-informed or wrong decisions under IC, which would disadvantage them in retirement, respondents also felt DCU

would best mitigate against future legal risk for schemes and employers should this result in claims for liability.

“The limitation of risk of further legal challenge from scheme members remains a deciding factor. The associated risk identified with ‘immediate choice’ is significant enough to outweigh any administrative advantage that this may present”. - FF (NI) SAB

2.48 The consultation had set out the additional long-term administrative burdens which could be expected with DCU however some commentators felt these additional pressures would ultimately be justified if delivering improved member outcomes at the point of retirement and where the most crucial information members require for effective decision making is available and updated. It was also felt that DCU mitigated against the urgent timescales for administering IC and the risks for those members, mainly deferred, who either could not be reached or did not respond within the necessarily close prescribed timescales.

2.49 This progressive approach to administrative workloads was a theme across some submissions from workforce representatives. Whilst recognising the additional long term administrative burdens associated with DCU other stakeholders, including those for the police scheme, also acknowledged related opportunities to improve services to members.

“The communications challenges with DCU remain as for IC, but are spread over a greater number of years, which will allow provision of better information to members over time through repetition and engagement”. - PSNI

2.50 In its response NIC-ICTU, which provides composite employee representation for each of the unionised workforces in scope of the consultation considered DCU as preferable as it would be:

“..easier for scheme members to deal with and provides scheme administrators with time to deal with priority issues such as ill-health and death in service cases”.
- NIC-ICTU

2.51 This was echoed in some of the individual trade union responses, including NIPSA, the main union representing civil servants.

2.52 The Alliance party, which was the only political party that submitted a response to the consultation, noted that DCU would be more administratively challenging in the long term but would nevertheless be justified by providing more certainty for individuals at the right point in time.

2.53 In its response to this segment of the consultation the NASUWT advocated the DCU over IC but also articulated a preference towards a third approach wherein the scheme would determine the arrangement the member should be a member of during the remedy period, subject to a guarantee that the higher amount of benefits

from either option would be made available and the member would also retain the right to reject the scheme's determination.

"The NASUWT believes that this is preferable to placing all scheme members who fall within the scope of the remedy in the legacy scheme as a default. Nevertheless, if the 'Government choice' option is not made available, the NASUWT is very clear that the DCU option is vastly preferable to the immediate choice option." - NASUWT

- 2.54 This concept of an anytime or 'hybrid' third choice option is one which was raised in initial discussions with TUS representatives leading up to the consultation but was not substantially or effectively further elaborated upon in the consultation responses.
- 2.55 While recommending the DCU as the most appropriate option both to mitigate against future legal risk against the scheme and also the possibility of ill-informed decision making, the FBU also raised scheme specific concerns particular to the scheme for Firefighters. The PSPA(NI) 2014 provides that the NPA for the reformed Firefighters scheme is specified in its scheme regulations at between 55 and 60 years. The regulations currently specify age 55, which is lower than both the legacy 2007 firefighters NI scheme and the comparable 2006 and 2015 schemes in Britain, which each have an NPA of 60.
- 2.56 The FBU submission highlighted that this scenario may be especially problematic for its 2015 members if defaulted to the legacy 2007 scheme for the remedy period, and also those who might choose the 2015 firefighters' pension scheme as their eventual DCU. Due to differences in the contribution levels between arrangements (2007 scheme members pay lower contributions rates) FBU argue contribution deficits may also result.

"Simply defaulting 2007 scheme members into their legacy scheme instead of offering them an indicative choice will be problematic in terms of the NPA issue and could also cause unintended and avoidable consequences because of the different contribution rates between the legacy and 2015 scheme". - FBU

- 2.57 The FBU advocated that an indicative choice should be provided to address this issue. Its latter point concerning treatment of differing contribution rates between some legacy and reformed arrangements was also raised as an issue by stakeholders for the Police scheme.

Department of Finance response

- 2.58 From the responses received a clear view has been expressed that the features of the IC the option present unacceptable risks for the majority of members in respect of their actual future outcomes. For the majority who expressed a view this ultimately outweighed any perceived IC benefit or real world certainty the immediate assurance about which set of rules would be used to calculate remedy period service might provide. Many respondents felt strongly that IC might not provide the pension outcomes individuals had previously expected, and these risks could be all the

greater as in many cases this would not become apparent for many years until the very point of benefit crystallisation.

- 2.59 Having considered all responses received the view of the Department of Finance is that the DCU option represents the fairest option to ensure members have appropriate choice, clarity and control concerning their remedy period entitlements, whilst also comprehensively removing the age-discrimination identified by the courts. On this basis it now proposes to progress with the DCU option.
- 2.60 The points raised in the consultation in respect of the particular circumstances of the Firefighters scheme are noted. The Department of Finance does not consider a bespoke option for indicative retirement is justified as this would retain an age related difference in treatment for this sector. However further consideration will be required as to any scheme level initiatives which may be appropriate or available within the context of the overall DCU remedy solution.
- 2.61 Further scheme level policy decisions may also be required on additional issues including how variances in contribution between some scheme arrangements are handled both in the Firefighter Scheme and Police Schemes.
- 2.62 Given the decision to proceed with DCU the concerns raised which were specific to the IC option should not now arise.
- 2.63 The Department is grateful to receive the useful contributions provided in individual and organisational responses on the challenge of administering the DCU option over a long term period in excess of 40 years into the future. It is anticipated that in comparison to IC the extended timescales involved for DCU will provide space necessary for development and implementation of enhanced or additional administrative, and technical systems necessary to underpin the required processes to ensure accuracy and efficiency is effectively sustained.
- 2.64 As part of that challenge the immediate task to legislate to remove the discrimination from the end of the remedy period on 31 March 2022 remains imperative. The Department will now take steps to progress the necessary changes, which will be required in primary legislation to accomplish this. Changes in scheme regulation will also be necessary by 1 April 2022.
- 2.65 In light of concerns on timescales for the most pressing legislative, technical, and administrative changes that are required consideration is now being given to what flexibilities may be available for schemes within the main timescales set out previously in the consultation document. This will not change the dates of the remedy period. The remedy period will still end on 31 March 2022 in order to bring the existing discrimination to an end at that point, and all members will be in reformed schemes from 1 April 2022. However to assist schemes in responding to the administrative challenges of installing new or revised processes and systems, and to complete communications to members, it is proposed to provide scope for the scheme changes to administer the remedy to be introduced retrospectively between 1 April 2022 and 1 October 2023. Should they require this flexibility schemes would need to specify the relevant date within this period in their scheme regulations.

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

- 2.66 Some members have already retired and received pension benefits in respect of remedy period service, or will do so between now and the introduction of the DCU by October 2023. The consultation document set out that these members can opt to be treated as a member of their legacy scheme for the remedy period.
- 2.67 The Department of Finance will work with schemes to develop processes to give effect to this entitlement. Where possible, schemes will also seek to provide reformed scheme members who retire before October 2023 with a choice of legacy or reformed scheme benefits for the relevant period at retirement. In due course schemes will also seek to revisit cases of reformed scheme members who have already retired ahead of the introduction of the DCU, where, and to the extent, this is possible. Scheme members who choose to change schemes, may in some cases have to repay benefits already received or pay additional contributions. Where this may be necessary, it will be made clear to members when making their choice. These processes will be administratively complex and will need to be developed before schemes can set out their final plans on managing past cases. More detail on revisiting past cases is set out in the Technical Annex at A.1 to A. 9.
- 2.68 Tax adjustments may also be required for individuals who have retired during the remedy period and who wish to receive different pension benefits. This is dealt with in the next section.

Tax implications of DCU

- 2.69 The tax position of the majority of members will not be affected by DCU however, some members whose pension arrangements change may experience a change in their tax liability. The consultation set out that where an individual had overpaid tax, they would be compensated without any time limits. Alternatively where tax is owed this would be collected in line with usual statutory time limits.
- 2.70 Question 24 of the consultation invited views on how the remedy proposals would interact with the tax system. Some responses to this question explicitly supported the proposal to compensate individuals for tax charges incurred as a consequence of the design of the remedy's solution. It was also thought this would be more readily administered and transparent under the DCU proposal. Other responses were concerned that the commitment in the consultation to as far as possible return individuals to the position they would be in had the discrimination not occurred would not be realised.
- 2.71 A common concern expressed in responses was that the existing taxation regime is already a complicated and difficult area for both administrators and scheme members and the provision of comprehensive and clear information on tax impacts to affected

members should be a priority. Concerns were also raised about the impacts for members who receive unanticipated tax demands they may be unable to meet.

- 2.72 Some responses requested that more detail be made available on the arrangements which will be available to individuals affected by Annual Allowance (AA) adjustments, and also on the scope of other flexibilities, including on 'scheme pays' or how scheme pays would be handled where it had already previously been applied.
- 2.73 Other responses highlighted concerns that the proposals on tax could have differential effects on younger members now subjected to a more complex regime than their predecessors. Conversely, others felt younger members could in fact be placed in a more favourable position than their older colleagues in the scenario where, having not been previously transitionally protected but rather moved into the reformed scheme in 2015, the younger scheme member might now pay less tax on legacy benefits than an older member who had always been in receipt of those benefits.

Department of Finance response

- 2.74 The Department of Finance acknowledges the points made by respondents on the complexity of pensions taxation and the challenges this may present to both individuals and organisations. Pensions taxation is a reserved matter however these concerns have been relayed to the Treasury to inform its further consideration of any proportionate steps available within the taxation regime to minimise the administrative burden on members and organisations. Nevertheless, the necessary tax corrections following the implementation of the DCU will still place an administrative burden on some individuals, particularly those affected by the annual allowance.
- 2.75 The need to provide clear and accurate communications and information to members on the DCU process is also acknowledged and the Department will work with schemes where feasible to ensure consistency in this area. Notwithstanding it should also be acknowledged that as each individual scheme member's tax position is unique to their personal circumstances they alone will hold some of the data necessary to correct some elements of their tax position, particularly regarding their AA and it will not be possible to completely remove this burden in all cases.
- 2.76 Under the DCU the minority of scheme members who have sufficiently high income and/or pension accrual to trigger an AA charge which could change their liability in any tax year falling within the remedy period, will see a reduction in AA charge owed. For individuals who are affected by Annual Allowance (AA) adjustments, those who paid their original AA charge up front, will receive a refund. If Scheme Pays has been used to meet the tax charge, the associated pension debit will be amended accordingly, and schemes will receive the refund. Where an additional AA charge may be owed, any individual who does not wish to pay the tax charge upfront will have the opportunity to utilise Scheme Pays. If a member then faces an increased AA charge as a result of choosing reformed scheme benefits when they take their benefits, they will not bear the cost of any additional AA charge that is directly caused by the member exercising that choice.

- 2.77 Tax adjustments will also be required in cases where the amount of pension contributions that a member should have paid changes: either in 2023, at the point they receive their benefits, or both. As set out in the consultation, where an individual owes more contributions, they will receive tax relief on those contributions at their marginal tax rate in the tax year the additional contributions are paid. In some cases this may result in less tax relief than the individual would have received had the individual paid those contributions in the relevant remedy period years. In these cases, members can apply for compensation for the difference in the tax relief received.
- 2.78 The consultation proposed that where an individual was owed a return of overpaid contributions, the excess amount would be returned to individuals, and the tax owed in respect of the income used to fund the excess contributions would be collected, but only for those years within the usual statutory time limits. In response to concerns that individuals should as far as possible be returned to the position they would have been in had the discrimination been absent, and also that the operation of statutory time limits for the collection of tax could give younger members an advantage over older members when those younger members move into their legacy schemes in 2023, this approach has been modified. Individuals will now receive a payment to cover the value of their contributions, but with an amount deducted to reflect the underpaid tax. This differs from the previous position where individuals who had overpaid their contributions in remedy period years beyond the usual statutory time limits for tax collection would receive a full refund of contributions and not face any tax charge. Repaying an amount reflecting the value of overpaid contributions with tax deducted will help to minimise any potential “windfall” advantage being enjoyed by one group of members over another.
- 2.79 For individuals who have retired during the remedy period and who wish to receive different pension benefits, tax adjustments may also be required. Where an individual who has retired receives a revised pension award under DCU, this will be backdated to when their original pension award was made. If this results in an increase in pension payments, this will be paid in a lump sum in the year that the individual’s pension situation is corrected and will be taxed in that year, at the individual’s marginal tax rate at that time.
- 2.80 Where tax is owed on pension income by a member who has retired, it will not be collected for periods beyond the usual statutory time limits. However, because backdated pension will be paid all at once in a single year, and tax will be due in that year, then all that backdated pension will fall within the usual statutory time limits for tax collection.
- 2.81 In some cases an individual could pay more tax on their backdated pension than they would have done had they always been in receipt of those pension benefits, for example, if the backdated payment increased their total income so that a higher marginal rate of tax would apply. In this case, individuals can apply to their pension scheme to have the backdated payment allocated to the relevant remedy period years, and then to HMRC to have the remedy period marginal rates applied.

Chapter 3

Removing discrimination for future pension provision

- 3.1 Question 9 of the consultation sought views on whether the proposed approach to removing discrimination for the future service ensured equality of treatment. To achieve equality of treatment the consultation document proposed scheme members would accrue future service in the reformed schemes only from the end of the remedy period. This would require changes to primary legislation to remove the discriminatory transitional protections and close the legacy schemes for future service after 31 March 2022. Changes will also be required to scheme regulations.
- 3.2 There were 130 responses to this question - 110 from individuals and 20 from organisations. Of those respondents who expressed a distinct opinion 11 felt the proposal would technically ensure equal treatment from 1 April 2022 onwards. However, in many cases these respondents also expressed a view that scheme members should also be allowed to remain in legacy arrangement indefinitely.
- 3.3 On this question there was again crossover with issues and points raised in response to questions 1 and 2 on equality impacts. For example, member and organisational responses for the Police Pension Scheme reiterated concerns that younger members would be discriminated against, as NPAs in the new CARE schemes for some uniformed services are linked to age rather than length of service and as a consequence these younger members could not now accrue a full pension under legacy terms in the same way as their older colleagues or predecessors in the police scheme may have been able to:
- “The rationale for the treatment of those who were protected by reason of age (45 or over in 2012) needs to be set out clearly alongside the impact on these members since, as a result of the 2022 changes, they will not now be able to accrue a ‘full’ 1988 pension”. - PFNI*
- 3.4 The belief that moving legacy scheme members to the reformed schemes might discriminate on grounds of age in comparison to those who had already retired in the legacy scheme, or would do so before April 2022 was expressed in responses across various workforces.
- 3.5 Conversely, other respondents also felt that moving previously protected members to the reformed schemes would discriminate against those older members who had originally qualified for transitional protection.
- 3.6 Where responses claimed that previously protected members would suffer a disadvantage by being moved to the reformed schemes, this was often articulated in terms of a new or continued form of discrimination, however, a convincing rationale as to how the change would constitute a recognised form of unlawful treatment within the context of the courts’ targeted findings on transitional protections was not provided.

3.7 A number of respondents argued that equality could only be achieved by allowing all members to accrue benefits under the terms and conditions they originally signed up for and for this reason the legacy arrangements should continue to operate beyond 2022 for those members.

3.8 Arguments for retained membership of the legacy schemes was also expressed in terms of the expectation of members who joined under previous scheme terms that they would retain these terms indefinitely until retirement. This concern for 'legitimate expectation' was a common theme across many respondents who disagreed with the consultation proposal. Some respondents believed that it is unfair for pension arrangements to be changed at all, and that all members should be able to retire in line with the arrangements which were in place when they entered service:

"I joined NICS in 1996. I had a reasonable expectation that my terms and conditions in terms of my pension (including most importantly for me, age of retirement) would not be fundamentally altered during my service". - Individual response

3.9 Among those who raised these concerns many proposed it was justified that members joining after 1 April 2012 were placed in reformed schemes but felt that approach should be disapplied for those in service before 1 April 2012:

"A better way to ensure fairness and equality for all ages is to allow members who were members of the scheme before 1st April 2012 to have the option of having legacy benefits for the rest of their service. The reformed scheme should only apply to new members who joined from 1st April 2012". - Individual response

3.10 Whilst some responses appeared to concede that the proposal would achieve its intended purpose for equal treatment this question also provided an opportunity to reiterate opposition to the original 2015 reforms generally rather than the impact of the proposals on ensuring equal treatment:

"Whilst application of reformed scheme from 1/4/2022 would appear to provide greater equal treatment TUS remains opposed to the Hutton changes especially with regard to NPA linkage to SPA." - NIC-ICTU

3.11 Individual comments from members of the emergency response services expressed continued opposition to how the original 2015 reforms had restricted a concessionary approach on NPA to Police and Fire Service workforces, and advocated their own NPA should be similarly aligned:

"As a paramedic my life expectancy is reduced. This is a fact. Night working shift workers research etc. clearly states this as well as the stress and other factors associated with psychological trauma. It's a disgrace we aren't treated similarly to

other emergency services when we are called upon more than our counterparts”.
- Individual response

- 3.12 As well as the effects of higher NPAs associated with the reforms introduced in 2015 some organisational responses also revisited concerns that the new schemes were by design less advantageous to their members both in terms of benefit structure and the interaction with the taxation regime:

“The switch to a new career average revalued earnings (CARE) scheme for all HSC NI staff, with an accrual rate of 1/54th meant that some would see a reduction in value. This reduction is compounded by the interaction between the pension taxation system and the NHS pension schemes that result in members who were forced to be on both the reformed and legacy scheme paying significantly more in terms of annual allowance taxation” - BMA

- 3.13 Both medical and Firefighter unions voiced concerns at perceived effects of the 2015 reforms on retention and recruitment, where it was felt that if members leaving service early could effect a loss of valuable experience in those professions.
- 3.14 In addition to seeking to allow members to choose to stay in their legacy scheme beyond 2022 some responses from these sectors advocated the use of other scheme concessions to allow members to take benefits in legacy scheme and continue to work on or to take CARE accruals alongside legacy benefits at age 60 without reduction for early payment.
- 3.15 Some respondents raised points of accuracy with the consultation’s statement that: ‘By 1 April 2022, all members who were offered transitional protection from 2015 will in fact have reached their NPA in their legacy scheme’. (Para 3.12) This issue was picked up by stakeholders for the Police scheme who also expressed concern that by the end of transitional period not all members in legacy schemes will have accrued 30yrs of service and that NPA in legacy police schemes is also linked to length of service.

Department of Finance response

- 3.16 The Department of Finance notes the weight of responses, which focus opposition to the original reforms being applied to previously protected members following the removal of transitional protections at 1 April 2022. Also, whilst some responses did acknowledge the proposed approach would ensure equality of treatment within the context of the courts findings and the legal imperative to remove now discriminatory transitional provisions, this was in many cases caveated and superceded by their views concerning ‘legitimate expectation’.
- 3.17 It was also evident that many respondents considered the legacy schemes as being intrinsically more advantageous to scheme members. This is not fully accurate. In many cases the reformed schemes are more generous for members, especially for

those with less dynamic salary increases throughout their career. The Hutton Commission identified the CARE scheme design as inherently fairer for many lower paid members. Any reversal of the reforms would make these members worse off.

- 3.18 As well as promoting fairness the changes made to schemes in 2015 were deemed necessary to ensure that schemes remain sustainable and fit for purpose for the future. The reformed schemes remain among the best available in the workplace: backed by the taxpayer; index-linked; and offering guaranteed defined benefits on retirement.
- 3.19 Some respondents to the consultation believed it unfair for pension arrangements to be changed at all, and that all members should be able to retire in line with the arrangements as they were when they entered service. As responsible authority for public service pension policy the Department of Finance has an associated duty to keep arrangements under review and to take forward changes when it judges it necessary to do so for reasons of equality, to comply with legal challenge, or for effective cost management. The original 2015 reforms as approved by the Assembly in 2014 represent the outcome of such a review. The objectives and rationale of the reforms remains valid. The reformed public service schemes are designed on the basis of a longer working life to cover the cost of a longer retirement across the wider public service workforce.
- 3.20 As set out in the original consultation the total annual cost of paying out pension benefits in the NI unfunded public service pension scheme stood at £1.3 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 were and remain important steps to protect against unsustainable increases in costs.
- 3.21 It is important to note also that in practicality, the funding model for devolved public service pension schemes is also relative to the design and cost envelope of equivalent schemes in Britain, also funded by the taxpayer under central Treasury policies. To reverse the reforms for devolved schemes or deviate in any significant way from equivalent scheme design in the comparable schemes in Britain would require reassessment of the funding envelope for the devolved schemes. Any change which would have the effect of providing a more generous level of benefits to public service workers members here in comparison to their counterparts in Britain would require bespoke funding provision from the block grant, which would likely detract from existing budgets available for other important public services.
- 3.22 In terms of the arguments provided that the removal of transitional protections would create a new discrimination for those now moved to the reformed schemes. The Department of Finance does not accept that the removal of a scheme provision categorised as unlawfully discriminatory by the courts now gives rise to a valid claim for new discrimination against those who were previously protected by or benefitted from that unlawfully discriminatory scheme feature. Under the remedy proposal these previously protected members will be treated equally in the same way as those previously denied the transitional protection. If some members were allowed to remain in different schemes, that objective would not be achieved.

- 3.23 It is acknowledged that many respondents have a desire to maintain their current arrangements until the point at which they retire, even if this is after 1 April 2022. However, in introducing reformed schemes it was never the intention that legacy schemes would continue indefinitely. The transitional protections represented a targeted exception to the core policy rationale on the basis of the intended aim of protecting those within 10 years of retirement from the reforms. However as a consequence of the courts ruling that exception can no longer be justified as legitimate for future service from April 2022 and the Department of Finance does not believe it would be fair to allow some members, and not others, to continue under different arrangements and as members of different schemes, after the discrimination has been addressed and the remedy period ends.
- 3.24 Some individuals who begin service at the same point in time, but who are of different ages will retire at different points in time under different arrangements. This can occur when pensions arrangements change for the reasons given above. By 2022 the 10 year prescribed period for transitional protection will have expired and the majority of previously protected members are expected to have retired or to do so in the coming years. By 2022 all members will also have had at least 19 months notice about the remedy proposals and those who have chosen not to retire will have the same opportunities as other members of the reformed schemes to remain in service until at least or beyond their new scheme NPA, and have options to accrue more benefits in total over a longer period of service. They will continue to have access to a defined benefit, index linked, government backed pension arrangement with a significant employer contribution under the now more equitable and sustainable reformed CARE scheme model approved by the Assembly in 2014.
- 3.25 Having considered the responses to the consultation and the issues raised on the proposals for future arrangements after the discrimination identified by the courts has been addressed, the Department of Finance remains of the view that that the proposal that anyone who remains in service from 1 April 2022 will do so as a member of their respective reformed scheme is appropriate and ensures equal treatment in terms of scheme membership.
- 3.26 The rationale for the reforms still stand. It is also fair that anyone who remains in service will be eligible to do so as a member of these schemes, and is not treated differently by being able to remain in legacy arrangements. The Department of Finance therefore now proposes to take steps to progress the changes in primary legislation necessary to close the legacy schemes to further accrual on 31 March 2022, remove the transitional protection arrangements that were found to be discriminatory, and ensure that all future service is accrued under reformed scheme arrangements from 1 April 2022.

ANNEX A

Response to technical questions

Revisiting Past Cases

A.1 Question 10 of the consultation asked for views on proposals for revisiting cases of scheme members who were in service for a part of the remedy period but have since retired in receipt of a pension. It was proposed that these members would make a retrospective choice to receive benefits from the legacy or reformed scheme for service from 1 April 2015 to 31 March 2022. This would mean that:

- a member originally eligible for transitional protection could choose to receive reformed scheme benefits instead;
- a member originally eligible for tapered protection would be required to make a choice between legacy scheme and reformed scheme benefits; and
- a member originally ineligible for any form of protection could instead choose to receive legacy scheme benefits.

A.2 148 responses were received to Question 10. Some respondents agreed this approach was reasonable and addressed the risk of discrimination arising if a choice was not offered. Some individual responses expressed concerns for potential overpayments, which may arise following the member's choice.

“This could involve possible arrears situations and overpayment situations. The fact that it is the member who is making the choice has the potential to minimise overpayment situations.” - Individual response

A.3 Some others who supported the proposals cautioned that additional clarification and guidance may be required on the tax position or raised concerns as to the administrative burdens, in particular the difficulties of contacting some individuals who are now in retirement or deferred members.

A.4 Other responses disagreed with the proposal and suggested that those affected should be given the choice as soon as possible rather than waiting until 2022 as set out in the consultation document.

“It is completely unacceptable to suggest that past cases are not dealt with until the remedy is finalised, which the consultation suggests is 2022 at the earliest. The FBU proposes that past cases are revisited immediately” - FBU

Approach

A.5 The Department remains of the view that all members with service during the remedy period should receive a choice as to whether they wish to receive legacy or reformed scheme benefits for that period.

A.6 Entitlements for pensioner members who opt for alternative benefits to those already in payment will be backdated to the date the original pension commenced. Any additional amounts due will be paid from the scheme and subject to tax. While any overpayments that arise will need to be repaid by the member these should only arise

in instances where the member chooses alternative benefits to those already in payment, or where the removal of taper protection would lead to a change in entitlement.

- A.7 The correction of payments retrospectively will be complex in some cases and the Department of Finance will continue to work with schemes on the details for correcting payments to ensure that affected individuals are placed in the position that they would have been had the DCU been in place at the time that their benefits relating to their service since 1 April 2015 began to be paid.
- A.8 Where an actuarial adjustment was required in relation to the pension that a member could alternatively choose, the actuarial factors applicable at the date of their retirement will be used to calculate the benefits payable, thus ensuring the pension is retrospectively corrected to the same level as if the member had had access to it at retirement. This approach also ensures pensioner members are treated in the same way as other members in implementing the DCU.
- A.9 More detail on the treatment of cases for members who retire or receive pension benefits before the DCU is introduced is provided in Chapter 2 at paras. 2.66 to 2.68.

Member Contributions and Interest

- A.10 Question 11 invited views on the proposals to ensure correct member contributions are paid, in schemes where these differ between legacy and reformed schemes. The consultation proposed a two-stage solution to this issue under the DCU.
- Stage 1 - shortly after the end of the remedy period a retrospective charge or refund would be applied.
 - Stage 2 - at the point a member makes the deferred choice, (if reformed scheme benefits are chosen), the balance of contributions that would have been due under the reformed scheme would be retrospectively charged.
- A.11 23 responses were received on this question. While some respondents supported the approach it was also suggested that members should be given sufficient time to repay any amounts that are due, and by instalments.
- A.12 Others argued that underpayments should not be collected.
- “Any illegality within this scheme was wholly of the government’s making. Members did not ask for these changes to be implemented – all changes to the pension scheme were forced upon existing members”.* – Individual response
- A.13 Issues for the potential interactions with the pensions taxation regime were also raised both by individuals and organisations, especially where the adjustment could trigger a change of tax band. Other concerns focused on potential impacts for the lower paid and older members especially if the requirement to cover any contribution shortfall could lead to financial hardship. Some respondents also felt the implications of the 2 stage approach could negatively influence decision making about the most suitable remedy package for the individual.

A.14 Some respondents felt the 2 stage approach under DCU was overly complicated, administratively burdensome, and logistically problematic. In its response on this matter the FBU proposed a scheme specific approach may be warranted for the fire scheme to overcome these challenges:

“Dealing with contribution rebalancing in the DCU option initially appears more complicated because of the two-stage approach. However, the consultation provides an opportunity to avoid a significant amount to retrospective rebalancing if it recognises the specifics of the firefighters’ pension scheme and allows an indicative option for the DCU”. - FBU

A.15 The consultation document also asked related questions on payment of interest in connection with the technical application of the remedy proposals. Question 20 asked whether interest should be charged on amounts owed to schemes by members (including member contributions), and question 21 sought views on whether interest should be paid on amounts owed to members by the schemes. Both questions invited opinions on the appropriate rate which should apply. Question 22 also asked an associated question whether, if interest is applied, existing scheme interest rates should be used (where they exist), or if a single, consistent rate across schemes should be adopted. As each of these questions are directly linked to the issue of member’s contributions under question 11 they are dealt with collectively here rather than in sequence.

A.16 42 responses were provided to Question 20 and 44 responses to Question 21. The strong theme across responses was that interest should not be levied on member contributions due to the scheme but that schemes should pay interest on any amounts owed to members so as to recompense for any consequential losses on savings or investments. Most respondents justified this dual approach with the rationale that the remedy is a consequence of government errors for which members should be compensated but not penalised.

A.17 On the question of whether existing scheme rates or a single rate should be applied there were 34 responses and the majority of these were in favour of a single consistent rate being applied as this would ensure consistency and fairness and be easier to implement.

“This provides an opportunity to harmonise another aspect across public service pension schemes so applying the same interest rates across all schemes appears reasonable”. - Scheme Advisory Board for the Health and Social Care Scheme

A.18 Across those who supported the approach for a single rate of interest many also thought the rate to be adopted should be that which is the most beneficial to compensate affected members.

Approach

A.19 Having noted views and concerns raised with the approach proposed the Department considers that it is necessary that the appropriate contributions are paid for scheme benefits accrued. If members who are moved to the legacy arrangements were not charged contributions at the rate payable in respect of other members for the same period of service, there would be a difference in treatment which the Department does not consider is justified in context of the aim of removing the discrimination

identified by the courts, and placing individuals as far as possible back into the position that they would have been in but for the discrimination having occurred.

- A.20 Therefore, the 2 stage approach to adjusting member contributions, where this is required under DCU, will apply. The first stage will involve moving members to the legacy scheme in respect of any relevant service between 1 April 2015 and 31 March 2022. If a member has paid higher contributions in respect of any period than are due under the legacy scheme, the difference will be paid to the member from the scheme. Where a member paid lower contributions than those due, the difference will be owed to the scheme.
- A.21 Where a member in scope of DCU opts to receive benefits equivalent to those that would have been paid as a member of the reformed scheme, the second stage will be applied and any difference in contributions paid to the legacy scheme compared to those that would have been paid to the reformed scheme will be corrected. In this case the member would owe any shortfall to the scheme or the scheme would pay any overpayment to the member. The two stages will ensure that members have paid the correct contributions for the benefits that they choose to receive.
- A.22 The Department also considers that it is appropriate to add a reasonable rate of interest where sums are owed to either schemes or members. A member who underpaid employee contributions could have invested the additional money needed for those contributions over time and earned interest on that investment; or spent it on items that they might otherwise not have been able to buy. Their colleagues in the scheme who have been paying the correct level of contributions throughout, would not have had the benefit of such additional money over time. The application of interest to money owed ensures fair and equal treatment of members. Where interest is due members will be given the opportunity to repay any sums owed in a variety of ways, either in a single payment, by instalments over time, or by deduction from any pension lump sum received.
- A.23 The use of a consistent rate of interest on owed contributions and refunds was largely supported by respondents to the consultation. Further consideration will now be given to an appropriate rate in conjunction with appropriate actuarial advice.

Voluntary Member Contributions (VMCs)

- A.24 The consultation set out that all additional benefits purchased via VMCs in the remedy period could be converted to an equivalent value of Additional Pension (AP) in the scheme that the member does not currently belong to. This equivalent value would then only be added to the member's pension where they chose to join the alternative scheme design for the remedy period. In circumstances where the member opted to retain the original scheme design, they would keep the additional benefit originally purchased. However, the value of the AP in the alternative scheme would also be shown on the member's benefit statement.
- A.25 Under some reformed schemes members also have options to buy-out any applicable reduction in pension taken before Normal Pension Age (NPA). In the reformed civil service scheme (alpha) this is known as Effective Pension Age (EPA). In the reformed Health and Social Care (HSC) scheme it is called the Early

Retirement Reduction Buy Out (ERRBO), and in the reformed Teachers' pension scheme it is termed 'Buy Out'.

- A.26 The consultation document proposed that it would not be possible to convert these arrangements to an equivalent value of AP in the legacy scheme and suggested that members who are returned to the legacy scheme for the remedy period a refund of their contributions to such arrangements. A refund would void the EPA or ERRBO benefit even if reformed scheme benefits were chosen.
- A.27 Question 12 asked for comments on this approach. 23 responses were received and of those who expressed an opinion some strongly felt that any Effective Pension Age (EPA) or Early Retirement Reduction Buy Out (ERRBO) benefits should not be lost if a member chooses to move to the legacy schemes.

"I think that people should be credited with additional pension for their contributions where possible. For the EPA, I think that those who are already paying it for the remedy period should be allowed to continue it. Otherwise they are effectively being penalised in terms of their desire to retire earlier than the NPA. If they later opt for the legacy pension, the EPA payments could be refunded (with interest)". - Individual response

Approach

- A.28 Having reviewed responses, the Department will give further consideration to ways to ensure that members may retain rights in the schemes in which they made voluntary member contributions, specifically in relation to EPA and ERRBO.
- A.29 The detail on how this should be implemented will be considered in scheme level discussions, and subsequent consultations on scheme regulations.

Annual Benefit Statements (ABS)

- A.30 Question 13 asked for comments on the proposed treatment of annual benefit statements. Under DCU scheme administrators would be required to produce ABSs detailing remedy period benefits under both the reformed and legacy scheme designs.
- A.31 There were 45 responses on this proposal. While many respondents supported the proposed approach this was often qualified by the perceived need for consistency in providing clear explanation of entitlements under each set of benefits and of the choices available under DCU.

"I am supportive of the general proposals outlined in relation to the treatment of annual benefit statements. The 'deferred choice' proposal is the most preferable for removing the discrimination identified by the Courts. Given the additional complexities, this can add in terms of the treatment of annual benefit statements, as outlined in the consultation, I believe that it is critical that careful consideration is given to ensure the content provided is as clear as possible for scheme members". - Individual response

A.32 Individuals who expressed negative views in response to the approach set out in the consultation did so citing perceived previous errors in ABSs, and the potential for inaccuracies. Others flagged that under DCU the complexity of receiving information on multiple potential awards could introduce confusion unless accompanied by other tools and calculators.

“It will be necessary to have access to calculators to allow members to review benefits they would have under each option between the 2015 and 2022 period. ABS’s will be necessary for some to review annual allowance targets and assess what scheme is best to avoid excess penalties.” Individual response

Approach

A.33 The Department continues to believe that setting out DCU information on benefits for the remedy period through Annual Benefit Statements is the best way to provide this information to active scheme members. The Department also acknowledges the requirement for this information to be clearly communicated to help members make an informed decision at the point of receiving their pension award.

A.34 The Department recognises concerns raised by some respondents that that the provision of two sets of information may not always appear to be meaningful until a member nears retirement. However, the Department continues to believe that this information should be provided to all those in scope of the remedy, as members will need to know their pension rights to help with retirement planning, which they may do many years from retirement.

A.35 Information will also need to be provided to affected members in receipt of their pension, to enable them to take informed decisions about the benefits they wish to receive in respect of any remedy period service. Deferred members will also need to be provided with information prior to the commencement of their pension and also on request to aid retirement planning.

A.36 As detailed at Chapter 2 the Department now proposes to provide additional flexibility on timelines for DCU remedy implementation by schemes which will also provide space to address additional challenges of communicating these changes in ways which aid retirement planning and reduce the risk of error in future statements.

III health retirement (IHR)

A.37 Question 14 in the consultation document asked for views on the proposed treatment of cases involving IHR.

A.38 It was proposed that members in scope who had already retired on ill health grounds should be able to retrospectively choose the benefits in the alternative scheme if they wished. Access to IHR benefits in the alternative scheme would however depend on their eligibility under the IHR rules in the alternative scheme. If ineligible under the terms of the alternative scheme, their choice would be between their existing ill health pension and the other form of pension benefit that would have been payable at retirement in the alternative scheme. This would be subject to actuarially reduced or deferred terms if the member is below their minimum pension age.

- A.39 There were 27 responses to Question 14. Some responses agreed with the approach as it meant that members within this category are treated the same as others for remedy entitlement. Other respondents argued that members should be entitled to the IHR arrangements they signed up to when they joined the pension scheme, and that those who have retired on ill health grounds should not have this decision revisited.
- A.40 Some organisational responses emphasised a need to prioritise IHR cases so that members awarded or refused benefits under one arrangement during the remedy period, should not have to wait until 2022 to have their entitlements revisited.

“It is completely unacceptable that ill-health retirement cases would be delayed and that they may not be dealt with until the remedy is finalised, which is 2022 at the earliest.” - FBU

Approach

- A.41 The approach set out in the consultation document ensures IHR members in receipt of benefits will be treated in the same way as other members of the schemes, including those other members already in receipt of (non IHR) pension benefits in terms of the choices available on which benefits they wish to receive for the relevant period.
- A.42 In practical terms treatment of IHR cases will often require the opinion of a medical practitioner to enable schemes to determine whether the member would have met the relevant IHR criteria to be entitled to IHR benefits under the alternative scheme at the relevant date. This could also vary, depending on the extent of ill health and the assessed capacity for the member to undertake work in future).
- A.43 When the scheme can confirm if the IHR criteria for the alternative scheme is satisfied or otherwise, it will provide the member with information about the alternative benefits available to them and the member may take a decision whether or not to receive these instead of the benefits already in payment.
- A.44 As the criteria for IHR varies between different schemes further details will have to be provided to relevant members by schemes when the DCU is in place.

Cases where a member has died since 1 April 2015

- A.45 In the case of members who have died since 1 April 2015 the consultation document proposed schemes would notify the relevant death lump sum recipient, any survivor benefit recipients, or the relevant legal representative of any increase in benefits due and arrange to make the appropriate higher payments. These payments could relate to a pension the member was in receipt of before their death, to a death lump sum, or to any survivor pensions in payment.
- A.46 Question 15 invited views on this approach and also on a more complex, alternative option where schemes could offer survivors with the choice between two packages of benefits. Schemes would need to set out the consequences of such a choice on payments already made to the member and/or their estate/survivors. This choice could be preferable for some survivors if the reformed scheme offered benefits not

available in the legacy scheme, for example survivor pensions for unmarried partners.

A.47 There were 26 responses on question 15. An overwhelming number of individual respondents supported the proposals in the consultation document for dealing with cases where the member had died since 1 April 2015.

A.48 There was also broad support for the proposals among organisations, as well as consensus that these cases should be handled sensitively. There should be no circumstances where the amount of pension already in payment to survivors should be decreased but rather schemes should take steps to ensure the highest value of benefits available under either option is assessed and made available.

“As a matter of principle, the RCN believes that no one, including the families of deceased members should experience any loss of pension benefits as a result of this remedy proposal”. - RCN

Approach

A.49 Schemes will review these cases as a matter of priority. Schemes will check whether a higher pension or lump sum amount would be due under the alternative scheme and take appropriate tactful measures to inform relevant family members where this is the case. The beneficiary will then have the option to request payment of the additional alternative amount.

A.50 Any unauthorised payment charges or additional expenses incurred (where evidenced – e.g. from reopening a probate application) as a result of remedy should also be reimbursed.

A.51 Consistent with the approach set out in the consultation document child pensions already in payment will be protected and where there are separate households containing family members who may be, or are already, entitled to survivor pensions, the choice between benefits will fall to the late member’s surviving spouse or partner.

Contingent Decisions

A.52 Question 16 in the consultation document asked for views on the proposed treatment of individuals who may have acted differently had it not been for the discrimination identified by the courts.

A.53 Under the proposed approach schemes would consider on a case-by-case basis any representations from members 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.

A.54 Before the individual would be deemed to be eligible for remedy, a member who wished to be treated as accruing benefits in their legacy scheme in relation to service in the remedy period, would be required to make retrospective payment of the correct employee and employer contributions, with appropriate interest. Tax adjustments may also be needed.

A.55 Where a period of more than 5 years had elapsed since a member opted out of a final salary legacy scheme, these individuals would usually lose their scheme entitlements to a ‘final salary link’. Under the terms of the Public Service Pensions

Act (Northern Ireland) 2014 members in the reformed schemes who also have final salary legacy scheme service will have those legacy benefits calculated on their final salary at the eventual point of retirement, or when they leave service, rather than when they left the legacy scheme. The final salary link would be restored where a member, and their employer, paid contributions owed for the relevant period.

A.56 Many of the responses on this question were broadly in favour of the proposals set out in the consultation document, including the approach for scheme level decisions on a case-by-case basis where appropriate consideration could be given to the evidence available:

“Whilst this is likely to be a rare occurrence, particularly with the low opt-out rates in NITPS, any such occurrence should be dealt with by schemes on a case-by-case basis, making sure the member is aware that the full combined contributions will have to be repaid to re-establish the pension rights.” - INTO

A.57 However, others disagreed a case-by-case examination was appropriate, but advocated a generic process should be acceptable and members should be facilitated with flexible options for repayment of contributions:

“The FBU opposes a case-by-case process. Instead, restoration of pensionable service should be accepted on receipt of an application by the affected member and based on reasonable terms being available to repay any outstanding employee contributions due.” - FBU

Approach

A.58 Having considered the responses received the Department maintains that members should be required to provide a reasonable account of how their actions, relating to their membership of a public service pension scheme, would have been different had it not been for the discrimination identified by the courts.

A.59 Unwinding some of these contingent decisions would involve complex calculations, or be likely to require evidence from the member, and possibly also their employer. There may also be tax implications.

A.60 The Department still believes that schemes should retain flexibility to consider such claims on a case-by-case basis and to determine them on their merit. However here is also a need for some consistency in approach and the Department of Finance will undertake further work with schemes to agree guidance on handling cases where members can show they have taken contingent decisions about their scheme membership. The guidance will be kept under review but it is accepted that not all circumstances of every case can be covered and schemes will also need discretion to consider such cases on an individual basis.

Public Sector Transfers

A.61 Question 17 asked if under DCU the deferred choice be brought forward to the date of transfer in the case of Club transfers.

A.62 19 responses were received on this issue. Some agreed with the proposal subject to equality considerations:

“Bringing forward the date of transfer for club transfers appears to be less of an admin burden. I believe the approach is fair and balanced provided that pensions are satisfied that this will not involve any potential discrimination.” - Individual response

A.63 However, other respondents argued the approach would undermine equality of treatment:

“The provision of deferred choice should be maintained until the member takes his or her benefits in the receiving scheme, ensuring equity of treatment of all members (those with Club transfers, and those without).” - PFNI

A.64 Question 18 in the consultation document asked a related question on whether, in circumstances that the receiving Club scheme is one of those schemes in scope, members should receive a choice in each scheme or a single choice that covers both schemes.

A.65 Individual responses to this question tended to favour a choice in both schemes whilst most organisational responses felt a single choice was more practical and administratively efficient.

Approach

A.66 In light of the policy decision for DCU the Department of Finance considers a consistent approach is now also required in relation to Club Transfers. Members who undertake club transfers will therefore not be required to make their choice at the point of transfer but at the point when they take their benefits. Their decision will relate to all service in respect of the period from 1 April 2015 to 31 March 2022, whether in the receiving scheme or service arising from a club transfer. Further details will be set out in updates to the club transfer rules and in scheme regulations.

Divorce Cases

A.67 Question 19 concerned the handling of divorce cases. The consultation proposed that a deferred choice would be exercised by the scheme member (pension debit member), and not the ex-spouse or civil partner (pension credit member). This would be consistent with the fact it is the scheme member who has been subjected to the discrimination so far identified by the Courts. The pension credit member will be awarded the percentage (as specified by the courts) of the higher cash equivalent transfer value (CETV) due under remedy and this will not be changed to reflect any choice by the scheme debit member which would result in a lower pension amount.

A.68 There were 20 responses received on this issue and most agreed with the proposals as set out in the consultation document. Some respondents highlighted the importance of ensuring no detriment to the credit member as a consequence of the DCU. This is what the proposal achieves.

Approach

A.69 The position set out in the consultation document will apply so that the CETV will be calculated as though the pension debit member had become a deferred member and elected to transfer their pension rights at the relevant date, so the transfer value will be based on whichever scheme, legacy or reformed, produces the higher amount in relation to any period of service during the period between 1 April 2015 and 31 March 2022. Where the CETV provided to the court would have been higher as a result of the implementation of the DCU, the pension credit member's benefits will be increased in proportion with the increase in CETV to reflect that additional amount. These changes will come into effect when the DCU is implemented in the scheme.

Abatement

A.70 Question 23 sought views on the proposed treatment of abatement. Abatement is the reduction or suspension of a pension in payment in the event of re-employment. Abatement applies, when a member in receipt of a scheme pension is re-employed and the combined total of their post-retirement pension on re-employed earnings exceed their pre-retirement salary. As a result any excess will normally be deducted (abated) from the pension in payment.

A.71 The consultation proposed that an abatement scenario triggered by any retrospective increase to a pension occurring as a consequence of DCU, would not be applied so as to effect a reduction in pension.

A.72 Where abatement applies in the legacy scheme, and a pension award already taken had been abated, but the member chose to move to the reformed scheme for the remedy period, the consultation proposed that the abatement calculation would need to be reviewed and adjusted as necessary from 1 April 2015 or the date the pension was awarded, if later. In some other cases, a reduction in legacy scheme pension might mean that a remaining legacy benefit entitlement was no longer abated. Benefits earned in reformed schemes are not subject to abatement.

A.73 There were 23 responses on this subject and they broadly supported the proposed approach.

A.74 Several respondents however highlighted perceived differences in the level of impact of abatement across different workforces or raised concerns that potential age related differences in treatment could potentially arise from the proposed approach under the DCU.

Approach

A.75 The Department has noted the concerns on potentially inconsistent effects in the proposed approach on abatement. This could apply particularly to those who are older and had protection (either full or tapered) and who potentially will have been abated throughout. However, a member who was not protected may choose legacy scheme benefits but have any excess that would have been abated ignored.

A.76 The Department will continue to work with schemes to consider this area further. Any necessary changes to scheme regulations will be subject to further consultation in due course.

Annex B

Glossary of Terms and abbreviations

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 n, the more valuable the rate 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.

AH - Aquila Heywood

Annual allowance (AA) - 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>.

AA charge - The tax charged at an individual's marginal rate of income tax on pension accrual above the annual allowance.

Annual Benefit Statements (ABS) - The statement which members receive each year telling them how much their pension is worth.

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).

ASCL- Association of School and College Leaders

Additional Voluntary Contributions (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.

Added years (AY) - Contracts available in some legacy schemes allowing members to purchase additional years of service.

BMA - British Medical Association

Scheme Career Average Revalued Earnings (CARE) - 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.

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.

CSP - Chartered Society of Physiotherapy

CTU - Community Trade Union Northern Ireland Justice & Custodial Branch

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 the Westminster Parliament.

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.

Deferred choice underpin (DCU) - The selected remedy to remove the unlawful discrimination identified by the courts. Formerly unprotected members will be returned to their legacy scheme for the remedy period (2015 – 2022). At the point benefits are payable they will 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.

Employer Contribution Rates - The percentage of the salary of employees that employers pay as a contribution towards the employees' pension.

Effective pension age (EPA) - As per ERRBO above – but this relates to the 2015 pension scheme for civil servants (and others) (“Alpha”).

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.

FBU - Fire Brigades Union

FDA - The Association of First Division Civil Servants

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.

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.

INTO - Irish National Teachers' Organisation

Immediate choice (IC) - One of the options which was consulted on but not adopted for removing unlawful discrimination identified by the court. Members would have been asked which scheme they want to be a member of for the remedy period, shortly after 2022.

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.

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.

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 (LTA) - 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 (LTA) 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.

NASUWT - National Association of Schoolmasters Union of Women Teachers

NEU- National Education Union NI

NIC-ICTU - Northern Ireland Committee - Irish Congress of Trade Unions

NIPB -Northern Ireland Policing Board

NIPSA - Northern Ireland Public Service Alliance

NIW - Northern Ireland Water

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.

PFNI -Police Federation for Northern Ireland

PSA & SANI - Police Superintendents' Association and Superintendents' Association of Northern Ireland

PSNI - Police Service of Northern Ireland

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, , NHS employees, teachers, local government employees, the police and firefighters..

RCN - Royal College of Nursing

Reformed scheme(s) - The reformed public service pension schemes introduced under the Public Service Pensions (Northern Ireland) Act 2014.

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.

SAB – Scheme advisory board

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.

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.

UCU - University College Union

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.

UTU - Ulster Teachers' Union