

Amendments to the Northern Ireland Firefighters' Pension Schemes

McCloud / Sargeant Remedy:
Phase One (Prospective)

Consultation

December 2021

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1. Executive Summary

- 1.1. Public service pension schemes in Northern Ireland were reformed in April 2015. The changes followed a fundamental structural review by the Independent Public Service Pension Commission, chaired by Lord Hutton of Furness.
- 1.2. As part of the 2015 reforms, protection was provided to those members who were close to retirement, meaning that they would be allowed to remain in their legacy scheme or gradually transition to the relevant reformed public service pension scheme. For the firefighters' pension scheme this applied to those within fourteen years of their normal pension age. This policy was referred to as transitional protection.
- 1.3. Following legal cases taken by some members of the firefighters' and judicial schemes in Great Britain (the McCloud/Sargeant cases) in December 2018 the Court of Appeal found that this part of the reforms unlawfully discriminated against younger members of those schemes as transitional protection was only offered to older scheme members. The Courts require that this unlawful discrimination be remedied.
- 1.4. Rulings of the Court of Appeal in England and Wales are not directly binding in Northern Ireland. However, the devolved public service schemes in Northern Ireland incorporate the same transitional protection arrangements as the schemes in Great Britain and the implications of the Appeal Court decision are such that all schemes must be treated as affected by the 'McCloud/Sargeant' decisions and so require to be remedied.
- 1.5. In order to remedy the discrimination, the Department of Finance held a consultation to consider the potential options to remove the discrimination. Following the close of the consultation in November 2020, it was announced in February 2021 that affected members would receive a 'deferred choice' of which pension schemes benefits they would prefer to take at the point they retire in respect of any remediable service rendered between 31 March 2015 and 1 April 2022. This choice is whether the benefits should be modelled on the relevant legacy scheme or reformed scheme. This is known as the Deferred Choice Underpin (DCU) and the Retrospective Remedy. Where members are already receiving pensions, they will be given a choice as soon as practicable.
- 1.6. In addition, from 1 April 2022, all those who continue in service will do so as members of the reformed schemes, regardless of age, meaning all members will be treated equally in terms of which pension scheme they are a member. This is known as the Prospective Remedy.
- 1.7. The Public Service Pensions & Judicial Offices Bill (PSPJO) was introduced to Parliament in July 2021 to address the remedy solution for age discrimination in public service pension schemes. A Legislative

Consent Motion (LCM) which extends the provisions of the PSPJO Bill to include Northern Ireland has been approved by the NI Assembly.

- 1.8. The Department of Health as the Responsible Authority for the firefighters' pension schemes is now considering how best to implement the scheme level changes that will be required when the relevant provisions in the PSPJO Bill are enacted and come into force. This relates to both Prospective Remedy, ensuring all future accrual from 1 April 2022 is in the reformed scheme, and Retrospective Remedy, enacting the DCU.
- 1.9. This consultation will address those elements of the Prospective Remedy, including moving all members to the reformed scheme ("the 2015 scheme") from 1 April 2022 and closing the legacy schemes to future accrual from 31 March 2022. This will mean that all members are treated equally in respect of any pensionable service rendered after 31 March 2022. There will be an additional consultation in due course on the DCU to address those elements of the remedy that will be retrospective in effect (i.e. relating to the remedy period 1 April 2015 to 31 March 2022).
- 1.10. The PSPJO and the secondary legislation to be made under it, covering both "Prospective" and "Retrospective" phases of the remedy, remove the transitional protection that the Courts found to be discriminatory based on age. All eligible members, irrespective of age and proximity to normal pension age (NPA), will have accrued benefits in the legacy schemes for the remedy period (1 April 2015 - 31 March 2022).
- 1.11. This consultation will be open for views from 1 December 2021 to 11 January 2022.

2. Prospective changes to remove age discrimination

- 2.1. In April 2015 public service pension schemes were reformed. The cost of the legacy schemes had significantly increased over the previous decades, with most of those costs falling to the taxpayer. To protect against unsustainable increases in costs, new schemes were introduced with career average revalued earnings (CARE) design. These are the “2015” or “reformed” schemes.
- 2.2. As part of the 2015 reforms, members of the legacy schemes (i.e. those defined benefit pension schemes that had been introduced prior to 1 April 2015 for firefighters), who were aged within 10 years of their NPA on 31 March 2012, were “fully protected” and allowed to remain in their legacy scheme. Members who, on 31 March 2012, were aged within 10 to 14 years of their NPA were allowed to remain in their legacy scheme for a period on a taper basis. Together, these protections (“full” and “taper”) were referred to as transitional protection.
- 2.3. In December 2018 the Court of Appeal held that the transitional protection, offered to members who were closer to retirement age gave rise to unlawful discrimination. The courts required that this unlawful discrimination be remedied by the government. It is important to note that the transitional protection element of the 2015 reforms was found to be discriminatory, not the reformed scheme itself.
- 2.4. In July 2019 the government confirmed that it accepted the Court’s judgment had implications for the other public service schemes that had similar transitional arrangements.
- 2.5. In July 2021 the PSPJO was introduced to Parliament, which when enacted, will provide that all firefighters who continue in service from 1 April 2022 onwards must do so as members of the reformed scheme. Legacy schemes (i.e. the Firefighters’ Pension Scheme and the New Firefighters’ Pension Scheme) will be closed in relation to service after 31 March 2022. A Legislative Consent Motion (LCM) which extends the provisions of the PSPJO Bill to include Northern Ireland has been approved by the NI Assembly.
- 2.6. The secondary legislation to be consulted on here will allow provisions for the Prospective Remedy changes: the move of all members to the reformed scheme from 1 April 2022 and the closure of the legacy schemes to future accrual from 31 March 2022 (the Prospective Remedy). This ensures that from 1 April 2022 all active members of the firefighters’ pension scheme will accrue benefits in the same scheme.
- 2.7. There will be an additional consultation in due course to address the Retrospective Remedy enacting the DCU ahead of it coming into operation by 1 October 2023.

3. Proposals to be consulted on

- 3.1. This consultation is on the amendments required to implement the Prospective Remedy, including moving all active members to the reformed scheme and making consequential changes to scheme regulations in line with the PSPJO. It also consults on other minor amendments to the NI Firefighters' Pension Schemes to align with similar changes which have been introduced to Firefighters pensions in GB.
- 3.2. A draft set of regulations to ensure all members accrue benefits in the reformed scheme from 1 April 2022 and to address other minor amendments have been published alongside this consultation.
- 3.3. There are two areas where we are considering whether further amendments to the regulations may be needed, beyond those in the published draft. The policy intent on those areas is set out below. When responding to this consultation, we ask you to presume that the draft regulations will reflect the policy intent as described.

Policy Intent

- 3.4. **Legacy scheme purchasing of additional benefits.** To ensure that those provisions which allow arrangements for purchasing service in the legacy schemes by means of periodical contributions can continue after 31 March 2022 and that no new legacy scheme arrangements can be entered into after 31 March 2022.
 - 3.4.1. In both firefighters' legacy pension schemes, it is possible for members to purchase additional pensionable service, where they meet certain criteria. They do this by agreement with the scheme manager and pay for it either as a lump sum or by way of periodical contributions over a period of years, until a set age (typically NPA).
 - 3.4.2. All such existing agreements will remain in force after 31 March 2022. This is because they do not involve continuing to accrue legacy scheme benefits in relation to service after the closing date, rather, the scheme members concerned are paying in instalments for a previously agreed enhancement to their pre-transfer service. These arrangements are therefore unaffected by the PSPJO or by our draft regulations. It should be noted that members will only be permitted to "complete" existing arrangements entered into before 1 April 2022, subject to meeting any other relevant criteria (such as remaining in active service). Members will not be allowed to enter into arrangements to purchase additional service in the legacy schemes on or after 1 April 2022.

- 3.4.3. In order to give effect to the policy that accrual in the legacy schemes ceases on 31 March 2022, we are considering what provisions might be needed to ensure that no new arrangements can be entered into after 31 March 2022.
- 3.4.4. We welcome views on whether scheme regulations would already achieve this without amendment.
- 3.5. **Ill-health retirement (IHR)**. To ensure that a protected member who applies for IHR before 31 March 2022 where the application is determined in their favour after that date is treated no less favourably than if the application had been determined on that date.
- 3.5.1. Members who move to the reformed schemes and subsequently become subject to ill-health retirement will be assessed, and receive ill-health benefits, in accordance with the 'one pot' ill-health arrangements under the reformed scheme provisions – this means that cases will become subject to different qualifying criteria than under the legacy scheme rules.
- 3.5.2. There will be cases that will be in the process of being considered for ill-health retirement on the date that all members will begin to accrue benefits in the reformed scheme - i.e. the ill-health process will begin on or before 31 March 2022 and will not conclude until 1 April 2022 or later.
- 3.5.3. The final approach to achieving the policy intent is still under development so our draft regulations do not contain any provision on ill-health retirements. We will use powers provided by PSPJO to amend scheme regulations in this area, in line with the policy intent set out in this document.
- 3.5.4. Subject to the outcome of this consultation, we will therefore use powers under PSPJO to make regulations protecting the position of ill health retirees whose cases are pending on 31 March next year, and in particular to ensure they are no worse off as a result of a decision being made after that date.
- 3.5.5. For any ill-health cases that straddle 1 April 2022, the intended policy is the introduction of an "ill-health retirement underpin". This will mean that such members receive a 2015 Scheme ill-health pension calculated at the date they actually retire; but that if a legacy scheme ill-health pension calculated as at 31 March 2022 would have been higher, the 2015 Scheme pension must be increased by the difference between the two.
- 3.5.6. The "underpin" will effectively guarantee the member an ill-health pension that is at least as much as the they would receive had they been ill-health retired under the terms of their legacy scheme on 31 March 2022.

3.5.7. The proposed ill-health underpin will work as follows:

- a) The member moves to the 2015 Scheme on 1 April 2022 and remains in the scheme until the date of ill-health retirement;
- b) The one-pot ill-health pension arrangement applies in the same way as it does to any other member who moves to the 2015 Scheme before their ill-health process starts;
- c) A notional ill-health pension is calculated in accordance with the member's legacy scheme provisions on the basis that they had been ill-health retired on 31 March 2022;
- d) Ill-health pension (calculated under the one pot arrangement) will be paid from the 2015 Scheme;
- e) Where the notional legacy scheme ill-health pension provides a greater ill-health pension entitlement, the difference between both calculations will be paid to the member as a pension enhancement from the 2015 Scheme;
- f) Survivor benefits will be paid in accordance with the 2015 Scheme regulations.

Summary of additional amendments to the NI Firefighters' Pension Schemes

3.6. We are also seeking views on a number of outstanding minor amendments to NI Firefighter Schemes. Subject to the outcome of the consultation, these minor changes may be brought forward as part of this legislative process.

3.7. **Acceptance of club transfer value payments** – Paragraph 45 of Part 3D of Schedule 2 of the 2015 Firefighters' Pension Scheme

3.7.1. Since 2006, Firefighters' Pension Scheme (FPS) has been closed to new membership. For this reason, the Firefighters' Pension Scheme (Transitional and Consequential Provisions) Regulations (Northern Ireland) 2015 made it clear, in amending Schedule 2 to the 2015 Scheme, that club transfer payments from other public service final salary pension schemes should be paid into the New Firefighters' Pension Scheme (NFPS) and not into the FPS. It has been accepted that it would be inequitable if existing members of the FPS in England, Scotland and Wales were not to be permitted to join the NI FPS on transferring to the Northern Ireland Fire and Rescue Service. The proposed amendment would permit such scheme transfers to take place.

3.8. Scheme Administrator – makes amendments to clarify administrator responsibilities for the purposes of Part 4 of the Finance Act 2004.

3.8.1. Article 88 of the Firefighters Pension Scheme is being amended to reflect that NIFRS Board is the pension ‘administrator’ for the purposes of the Finance Act 2004 and not the Department of Health, Social Services and Public Safety.

3.8.2. Regulation 179 of the 2015 Firefighters’ Pension Scheme is being amended to remove the reference to the Registered Pension Schemes (Splitting of Schemes) Regulations 2006 as this is not relevant to the NI 2015 Firefighters’ Pension Scheme.

3.9. Abatement - Withdrawal of pension during service as regular firefighter

3.9.1. Abatement policy is that pension payments should be reduced where a member is reemployed in the public sector and receives a pension and salary which exceeds their earnings before retirement. Under Article 83 of the FPS NIFRS Board can withdraw all or part of the pension of a member while they are reemployed as a firefighter. In the equivalent GB scheme, the definition of reemployment was expanded so that abatement may apply to a member reemployed in any role by any Fire and Rescue Service.

3.9.2. To remove ambiguity and align the NI and GB scheme, it is proposed that the definition of reemployment should be expanded so that abatement may apply to a member reemployed in any role by any Fire and Rescue Service.

3.10. Internal Dispute Resolution Procedure (IDRP)

3.10.1. Article 50 (as amended) of the Pensions (NI) Order 1995 require pension schemes to put in place an Internal Dispute Resolution Procedure (IDRP) for non-medical appeals. These amendments are being made to the Firefighters’ Pension Schemes to introduce dispute resolution arrangements in line with wider pension legislation.

3.11. The remaining amendments are to correct minor drafting errors.

4. Questions for consultation

- 4.1. **Question 1:** As required by the PSPJO, the draft regulations seek to ensure that the legacy schemes are closed to future accrual from 31 March 2022 and that all members are in the 2015 Scheme in respect of any pensionable service from 1 April 2022. Are the draft regulations sufficient to meet this aim? Do you think there are any changes or additions required to the draft regulations to achieve the stated policy aims?
- 4.2. **Question 2:** The government is proposing that the regulations will be drafted to make additional provision for ill-health retirements that straddle the transfer date. This provision would ensure that a protected member who applies for ill-health retirement before 31 March 2022, and which is determined in their favour after that date, is treated no less favourably than if the application had been determined on that date. Do you have any views on the proposals regarding ill-health retirement cases that straddle 1 April 2022? In particular, do you have any views on how the “underpin” should work or be provided for in the draft regulations?
- 4.3. **Question 3:** The regulations will need to ensure that provisions which allow arrangements for purchasing service in the legacy schemes by periodical contributions, entered into before 1 April 2022, can continue on and after that date and that additional benefit purchasing in the legacy schemes ceases on 31 March 2022. In your view, would existing provisions in the relevant reformed scheme regulations achieve these aims? Alternatively, would additional provisions be needed to achieve this outcome?
- 4.4. **Question 4:** Are there any other areas which you think should be addressed in these regulations to ensure all members are moved to the relevant reformed scheme from 1 April 2022, and that the differential treatment, as identified by the Court of Appeal, is ended?
- 4.5. **Question 5:** The draft regulations propose a number of additional amendments as outlined in paragraph 3.6 - 3.10 above. Do you have any views on these additional amendments to the NI Firefighters’ Pension Schemes?

5. Equality Impacts

5.1. When formulating policy proposals, public authorities are required to take into account the needs and effects of their policy on people within the equality groups specified in Section 75 of the Northern Ireland Act 1998 and to have due regard to the need to promote equality of opportunity and foster good relations between people with different protected characteristics when carrying out their activities.

5.2. An Equality Screening Exercise has been completed and published alongside this document. We would like to know your views as to whether any of the measures envisaged by this consultation might have any positive or negative impacts relevant to this statutory duty or cause any other discrimination between different groups which ought to be avoided. The following questions can help inform the completion of the Department's Screening template:

Q1. Are the actions/proposals set out in this consultation document likely to have an adverse impact on any of the nine equality groups identified under Section 75 of the Northern Ireland Act 1998? If yes, please state the group or groups and provide comment on how these adverse impacts could be reduced or alleviated in the proposals.

Q2. Are you aware of any indication or evidence – qualitative or quantitative – that the actions/proposals set out in this consultation document may have an adverse impact on equality of opportunity or on good relations? If yes, please give details and comment on what you think should be added or removed to alleviate the adverse impact.

Q3. Is there an opportunity to better promote equality of opportunity or good relations? If yes, please give details as to how.

Q4. Are there any aspects of this action plan where potential human rights violations may occur?

6. Privacy, Confidentiality and Access to Consultation Responses

- 6.1. For this consultation, we may publish all responses except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations and individuals responding in a professional capacity will be published. We will remove email addresses and telephone numbers from these responses; but apart from this, we will publish them in full. For more information about what we do with personal data please see our consultation privacy notice (Annex B).
- 6.2. Your response, and all other responses to this consultation, may also be disclosed on request in accordance with the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR); however all disclosures will be in line with the requirements of the Data Protection Act 2018 (DPA) and the UK General Data Protection Regulation (UK GDPR) (EU) 2016/679.
- 6.3. If you want the information that you provide to be treated as confidential it would be helpful if you could explain to us why you regard the information you have provided as confidential, so that this may be considered if the Department should receive a request for the information under the FOIA or EIR.

7. How to Respond

- 7.1. If you wish to comment on the proposals contained within this document, please submit responses to the address below.
- 7.2. Additional copies of the consultation package can be obtained by contacting Public Safety Unit either by phone or in writing. Details of the address and telephone number are shown below. Copies can also be downloaded from the consultation section of the Department's website.
- 7.3. If you require any of these documents in another format or language, please contact the Public Safety Unit.
- 7.4. The closing date for comments is 11 January 2022. Responses received after this date will only be considered in extreme circumstances and with prior agreement from the Department.
- 7.5. Please address any queries you may have regarding this consultation to Public Safety Unit.

By e-mail: publicsafetyunit@health-ni.gov.uk

In writing*:
Department of Health
Public Safety Unit
Annex 4
Castle Buildings
Stormont Estate
Belfast
BT4 3SQ

*Please note, currently the policy team are working remotely. In order that all responses are captured, if providing a written response, please also notify the team by telephone; 02890 523275.

- 7.6. Please ensure that the completed response questionnaire includes: your name, organisation (if relevant), address and telephone number, and whether your comments represent your own view or the corporate view of your organisation.

What Happens Next

- 7.7. Following the close of the consultation, all responses and feedback will be collated for review by the Department and a consultation report will be produced. Implementation of the amendments is subject to the passage of the PSPJO Bill.

ANNEX A

Glossary of Terms

Term	Explanation
FPS	The Firefighters' Pension Scheme as established by the Firefighters' Pension Scheme Order (Northern Ireland) 2007
NFPS	The New Firefighters' Pension Scheme as established by the New Firefighters' Pension Scheme Order (Northern Ireland) 2007
2015 Scheme	The Firefighters' Pension Scheme 2015 as established by the Firefighters' Pension Scheme Regulations (Northern Ireland) 2015.
Active member	A member of a firefighters' pension scheme who is actively employed as a firefighter (i.e. they have not retired, resigned or otherwise ended the employment).
Affected member	A scheme member who has suffered age discrimination, i.e. anyone who was employed as a firefighter on both 1 April 2012 and 1 April 2015, but was aged under 45, and thus too young to qualify for full transitional protection, on the former date. It includes taper protected members.
Age discrimination	Treating employees or any other group of people less favourably because of their age. Age discrimination is unlawful unless it can be shown to be a proportionate means of achieving a legitimate aim.
Career average revalued earnings (CARE)	A means of calculating pension entitlement based on a member's average pensionable pay over the course of their employment, adjusted for inflation.
Deferred choice underpin (DCU)	The mechanism by which affected and fully protected members will decide whether their service during the remedy period should be treated as service in their legacy scheme or the 2015 Scheme. Such a choice will be made when the member retires or when their pension benefits otherwise first fall to be paid (e.g. if they die before they retire). We will establish that in further regulations which we will consult on next year. It is not covered by these draft regulations.
Fully protected member	A scheme member who was granted full transitional protection in 2015, i.e. anyone who was employed as a firefighter on both 1 April 2012 and 1 April 2015 and was aged 45 or older on the former date.
Legacy scheme	The scheme of which an affected member was a member immediately before 1 April 2015 – i.e. the FPS or the NFPS.
McCloud, Sargeant, or McCloud / Sargeant	The court cases of McCloud (in relation to judges) and Sargeant (in relation to firefighters) which established that age-based transitional protection amounted to unlawful age discrimination.
Normal pension age (NPA)	The age at which an active member normally becomes entitled to receive their pension. It is stipulated in scheme rules and can vary from one scheme to another. For instance, the FPS and the 2015 Scheme have an NPA of 55 but the NFPS has an NPA of 60.

Term	Explanation
Prospective remedy	From 1 April 2022, all those who continue in service will do so as members of the reformed scheme, regardless of age, meaning all members will be treated equally in terms of which pension scheme they are a member.
Remedy period	The period to which the remedy for age discrimination will apply: 1 April 2015 to 31 March 2022, inclusive.
Retrospective remedy	Affected members and fully protected members will receive at the point they retire a choice of which pension benefits that they would prefer to receive in respect of any remediable service rendered between 31 March 2015 and 1 April 2022. This choice is whether the benefits should be modelled on the relevant legacy scheme or reformed scheme. This is known as the Deferred Choice Underpin (DCU). Where members are already receiving pensions, they will be given a choice as soon as practicable.
Retired member	A scheme member who has retired and is receiving pension benefits.
Survivor	An individual entitled to survivor benefits – normally a spouse, partner or child who is entitled to receive scheme benefits after the member dies.
Taper protected member	A scheme member who was offered tapered transitional protection in 2015, i.e. the right to join the 2015 Scheme on a phased basis. This applies to anyone who was employed as a firefighter on both 1 April 2012 and 1 April 2015 and was aged between 41 and 44 on the former date. Taper protected members are also affected members.
Transitional protection	The right to remain as a member of a legacy scheme beyond 31 March 2015

ANNEX B

PUBLIC CONSULTATION PRIVACY NOTICE

Data Controller Name: Department of Health (DoH)
Address: Annex 4, Castle Buildings, Stormont, BELFAST, BT4 3SQ
Email: publicsafetyunit@health-ni.gov.uk
Telephone: 02890 528161

Data Protection Officer Name: Charlene McQuillan
Telephone: 02890 522353
Email: DPO@health-ni.gov.uk

Being transparent and providing accessible information to individuals about how we may use personal data is a key element of the [Data Protection Act \(DPA\)](#) and the [UK General Data Protection Regulation \(UK GDPR\)](#). The Department of Health (DoH) is committed to building trust and confidence in our ability to process your personal information and protect your privacy.

Purpose for processing

We will process personal data provided in response to consultations for the purpose of informing the development of our policy, guidance, or other regulatory work in the subject area of the request for views. We will publish a summary of the consultation responses and, in some cases, the responses themselves but these will not contain any personal data. We will not publish the names or contact details of respondents, but will include the names of organisations responding.

If you have indicated that you would be interested in contributing to further Department work on the subject matter covered by the consultation, then we might process your contact details to get in touch with you.

Lawful basis for processing

The lawful basis we are relying on to process your personal data is Article 6(1)(e) of the UK GDPR, which allows us to process personal data when this is necessary for the performance of our public tasks in our capacity as a Government Department.

We will only process any special category personal data you provide, which reveals racial or ethnic origin, political opinions, religious belief, health or sexual life/orientation when it is necessary for reasons of substantial public interest under Article 9(2)(g) of the UK GDPR, in the exercise of the function of the department, and to monitor equality.

How will your information be used and shared

We process the information internally for the above stated purpose. We don't intend to share your personal data with any third party. Any specific requests

from a third party for us to share your personal data with them will be dealt with in accordance the provisions of the data protection laws.

How long will we keep your information

We will retain consultation response information until our work on the subject matter of the consultation is complete, and in line with the Department's approved Retention and Disposal Schedule [Good Management, Good Records](#) (GMGR).

What are your rights?

- You have the right to obtain confirmation that your data is being [processed, and access to your personal data](#)
- You are entitled to have personal data [rectified if it is inaccurate or incomplete](#)
- You have a right to have personal data [erased and to prevent processing](#), in specific circumstances
- You have the right [to 'block' or suppress processing](#) of personal data, in specific circumstances
- You have the right to [data portability](#), in specific circumstances
- **You have the right to [object to the processing](#)**, in specific circumstances
- **You have rights in relation to [automated decision making and profiling](#).**

How to complain if you are not happy with how we process your personal information

If you wish to request access, object or raise a complaint about how we have handled your data, you can contact our Data Protection Officer using the details above.

If you are not satisfied with our response or believe we are not processing your personal data in accordance with the law, you can complain to the Information Commissioner at:

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