



Home Office

McCloud/Sargeant – Public Service Pensions and Judicial Offices Bill

## **Frequently asked questions (FAQs)**

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## **Background**

In 2015 the government introduced reformed pension schemes across all the main public service workforces. The reforms included a policy of transitional protection that meant members closest to their Normal Pension Age (NPA) stayed in their legacy schemes.

The Court of Appeal later found this transitional protection to be discriminatory against younger members in the judicial and firefighters' pension schemes. The government accepted that the judgment had implications for the other schemes, as they contained similar transitional arrangements. Since then the government has been working to address the discrimination.

It was announced in February 2021 that affected members will receive a 'deferred choice' of which pension schemes benefits they would prefer to take at the point they retire, and this will apply across the majority of the main public service pension schemes. Where members are already receiving pensions, they will be given a choice as soon as practicable. The government is now legislating to make the changes as set out in this consultation response.

This means members will be able to choose to receive legacy pension scheme benefits or benefits equivalent to those available under the reformed pension scheme for service between 2015 and 2022. Not all members are better off in the legacy schemes, so it is important that individual members can choose which scheme benefits they want to receive.

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

## **What has the government published?**

### **HMT Public Service Pensions and Judicial Offices Bill**

The government introduced the Public Service Pensions and Judicial Offices Bill (PSP&JOB) to Parliament on 19 July 2021. This legislates for how the government will remove the discrimination identified by the courts in the way that the 2015 reforms were introduced for some members. In addition, the Bill will reform the pension arrangements and increase the mandatory retirement age for the judiciary, and put judicial pay and allowances on a firmer legal footing.

### **The Bill will implement changes across all the main public service pension schemes in response to the Court of Appeal judgment in the McCloud and Sargeant cases:**

- Eligible members of the main public service pension schemes will have a choice of the benefits they wish to take for the "remedy period" of April 2015 to 31 March 2022.
- From 1 April 2022, when the remedy period ends, all those in service in the main unfunded schemes (i.e. teachers, civil service, firefighters, police, armed forces and NHS) will be members of the reformed pension schemes, ensuring equal treatment from that point on.
- Bespoke measures to implement corresponding changes in the Judicial Pension Schemes (JPS) and Local Government Pension Scheme (LGPS) to reflect their different arrangements.
- Transfer members of the judiciary into a further reformed pension scheme owing to the judges' unique circumstances of appointment.
- Ensure there are no reductions to member benefits as a result of the 2016 cost control valuations.

The Bill will provide public service workers with greater certainty of their benefit entitlements. It ensures that public servants receive guaranteed pension benefits in a way that ensures that they are affordable and sustainable into the future.

The judicial measures acknowledge the unique constitutional position of the judiciary by updating their pension arrangements to reflect this. This, alongside changes to their judicial mandatory retirement age, will help to ensure our judiciary can continue to meet the demands of the justice system.

The Bill, and other supporting documents, can be found [here](#).

### **Cost Control mechanism**

Separate to the Bill, the government has decided to waive the impact of any ceiling breaches that arise as part of the 2016 cost control valuations process, but to honour any floor breaches. This means no member will see a reduction in benefits and be worse off as a result.

The related announcement can be found [here](#).

## **FAQs**

Please note these FAQs will be kept under review.

### **BACKGROUND AND THE INTRODUCTION OF THE BILL**

#### **Q1: Why did the government's reforms to the main public service pension schemes lead to discrimination?**

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

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

#### **Q2: Do members need to submit a legal claim to receive any pension changes to address the discrimination identified by the courts?**

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

The government has committed to applying any changes across the main public service pension schemes and so both claimants and non-claimants who are eligible members will receive the pension changes.

#### **Q3: What steps has the government taken so far to address the discrimination?**

A: Since the judgment the government has been working on different options to address the discrimination.

The government consulted between July and October 2020 to gather views on proposals to remove the discrimination. In February 2021, the government announced the implementation of a 'deferred choice underpin' which will allow eligible members a choice when they retire, of which pension scheme benefits they would prefer to take for the remedy period.

#### **Q4: What is a deferred choice underpin and why has the government chosen this approach?**

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

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

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

Deferring the choice until the point benefits are paid allows individuals to make their choice of which pension scheme benefits are better for them, based on facts and known circumstances as

opposed to assumptions on their future careers, health, retirement and other factors. The level of both pension scheme benefits will be known at retirement.

For those pensioners who are already receiving benefits relating to the period of discrimination between 2015 and 2022 there will be an immediate choice as soon as practicable once the necessary provisions are in place.

**Q5: Who is in scope for these pension changes and will receive the ‘deferred choice underpin’?**

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

- Were members, or eligible to be members, of a public service pension scheme on 31 March 2012;
- Were members of a public service pension scheme between 1 April 2015 and 31 March 2022; and
- The two periods above were continuous (or treated as continuous under the scheme regulations, including those with a qualifying break in service of less than 5 years).

**Q6: Why are members who joined between 2012 and 2015 not in scope?**

A: The Court of Appeal’s ruling identified unlawful discrimination as a result of differing treatment between older and younger members in service on or before 31 March 2012.

It is therefore these groups that we are now equalising treatment between.

**Q7: Why are members being asked to make a choice between their legacy and reformed pension scheme benefits?**

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

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

**Q8: Why can’t members stay in the legacy schemes until retirement?**

A: The 2015 reforms were not illegal. Whilst the courts found (in the McCloud and Sargeant litigation) that the transitional protection arrangements (whereby those within 10 years of normal pension age (NPA) were able to remain in legacy arrangements) were discriminatory on the grounds of age, the 2015 reforms themselves are not.

The reasons for the original reforms still stand - public service pensions should be affordable and sustainable, whilst also providing an appropriate pension to members. The reforms aimed to achieve this and are fairer to many lower and middle earners making them more better off under the new schemes.

Therefore, to address the discrimination identified by the courts, the government has set out that when the ‘remedy period’ ends on 31 March 2022, anyone who remains in service will do so as a member of the reformed schemes (of which many are already members).

**Q9: Will I lose all of my final salary benefits?**

A: No. Any pension you accrued in a final salary legacy scheme up to 1 April 2022 is protected and will make up part of your benefits when you retire. When you move to the reformed career average scheme in 2022 a final salary link will apply, meaning that your salary in the year or years before retirement will be used to calculate your final salary legacy scheme benefits. This will be the case even if you continue to work for many years between 2022 and retirement.

**Q10: Why isn't the government not just returning everyone to their old schemes?**

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

**Q11: What are the differences between the legacy and reformed schemes?**

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

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

The reformed schemes were designed to make public service pensions more affordable and sustainable for the future, while still ensuring public servants received appropriate pension provision in retirement. The reforms created a fairer system. The move from (mostly) final salary to career average pension means members accrue their pension at a typically higher annual rate based on their average salary in most of the public sector pension schemes. Although some members are better off in legacy schemes, the reformed schemes are more beneficial for others, particularly many lower paid members.

**Q12: Will members who had 'tapered protection' also be asked to choose between legacy and reformed scheme benefits?**

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

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

There will not be any provision for a 'tapered' system under which some members might be entitled or required to treat part of that period as service in one scheme, and part of it as service in another. An age-based system of tapered protection would perpetuate or even extend the discrimination identified by the courts.

**Q13: How will people who retire before the introduction of the deferred choice underpin be treated?**

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

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

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

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

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

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

**Q14: Will the survivors of eligible members who have died since 1 April 2015 also be asked to make a choice between the different pension schemes?**

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

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

In most cases the choice between benefits will fall to the late member's surviving spouse or partner. If there are children also in receipt of a survivor pension, and the decision maker lives in a separate household to the child, any decision taken will not affect the child's pension. Where the child and decision maker live in the same household, the usual rules around total survivor benefits payable will apply.

**Q15: Why haven't immediate detriment cases been addressed yet?**

A: The government accepts that affected members of the reformed pension schemes who have retired since 1 April 2015 or will retire before the deferred choice underpin is introduced, already have an entitlement to be treated as a member of their legacy scheme for the remedy period if they wish.

However, giving effect to this entitlement before legislation is implemented creates complex issues, particularly where there are interactions with the tax system, and it is not clear these cases can consistently be processed under pre-existing legislation without potentially creating adverse impacts. The government is continuing work to resolve these issues and to make legislative changes where necessary through the PSP&JO Bill.

The government acknowledges the fact that there are many pension administrators and scheme managers involved in processing cases across the UK. Provisions made through scheme regulations and established via the PSP&JO Bill should help ensure a consistent approach is taken to processing more complex cases and in turn help mitigate the risk of adverse tax impacts for members.

The government is aware that some fire and police employers are, as scheme managers, processing some immediate detriment cases ahead of legislation. At the request of the police and fire sectors, Home Office has issued informal and non-statutory guidance to assist with this. However, this guidance does not provide a definitive or complete resolution to all of the issues arising from immediate detriment cases and all cases processed using this guidance will need to be revisited once the full detail of the government's approach is finalised, and legislation is in place. This revisiting may include some considerable adjustments regarding tax.



**Q16: Why is the period when members will be receiving a choice of which pension scheme benefits they would prefer only between 2015 and 2022?**

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

**FUTURE PENSION PROVISION****Q17: What pension scheme will individuals be a member of from 1 April 2022?**

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

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

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

**Q18: Why is the government saying all members should be in the reformed pension schemes from 1 April 2022?**

A: The 2015 schemes that were introduced following the recommendations of the Independent Public Service Pensions Commission (the reformed schemes) offer generous pension provision, improve affordability and sustainability, and are fairer to lower and middle earners.

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

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

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

**Q19: Why are judges and the LGPS being treated differently?**

A: There are unique differences between the pre and post 2015 Judges schemes, which we need to account for in addressing the discrimination. A separate consultation was conducted, where members opted in favour of an 'immediate choice' in 2022.

The way that the transitional protection in the LGPS works is different to the other schemes, so MHCLG consulted separately on removing the difference in treatment. Following the consultation, the government announced that eligible younger members of the LGPS will be given the same protection their older colleagues were given when the scheme (for England and Wales) was reformed in 2014 (known as the 'underpin'). This means eligible members will receive at least the pension they would have received in the unreformed scheme.

**NEXT STEPS****Q20: What are the next steps after the legislation has been introduced?**

A: Following the introduction of the Bill, the government intends that the provisions for the deferred choice underpin will be implemented by 1 October 2023, or earlier where schemes are able to implement legislative change and processes ahead of that date.

**Q21: What are the next steps for the firefighters' pension scheme?**

A: It is intended that legislation to move people to the reformed schemes will take effect on 1 April 2022. Legislation to implement the deferred choice underpin will also be needed, to take effect by 1 October 2023 at the latest.

Scheme specific policy decisions will also be taken, and necessary legislation drafted.

We will engage with stakeholders including the Firefighters' Pensions Scheme Advisory Board for England during this process.

The Home Office will also continue to engage with scheme managers and administrators to allow them to prepare for implementation of the deferred choice underpin. These changes will be implemented by October 2023.

**Q22: When will the pension changes be implemented and introduced?**

A: The government is introducing primary legislation through the Public Service Pensions & Judicial Offices Bill to implement a deferred choice underpin within schemes. All eligible members will be treated equally and will be able to choose to receive pension scheme benefits from either scheme. Where necessary, payments will be backdated to 2015.

Provisions for the deferred choice will be implemented by 1 October 2023 for all members. Schemes may implement provisions for deferred choice earlier where it is possible to do so.

Following introduction of the Bill, schemes will carry out consultations on more detailed scheme-specific changes to both prospective and retrospective scheme regulations.

Where the changes legislated for through the Bill produce disproportionate tax results that cannot be resolved through powers provided in the PSP&JO Bill, further changes will be made in the upcoming Finance Bill and scheme regulations. For example, the current framework does not straightforwardly permit individuals to ask their pension scheme to settle Annual Allowance charges from previous tax years by reducing their future pension benefits ('Scheme Pays') – this is being addressed in the upcoming Finance Bill. Further details will be published on any further measures in due course.

**Q23: What detail will scheme regulations contain?**

A: The powers in the Bill to make scheme regulations can be used for the various purposes listed throughout the Bill. These include, for example, the process by which a member can make a choice or "election" to receive new scheme benefits, for interest to be paid to a member or scheme on any amounts owed to or by the scheme, to make provision for pension credit members, to make provision for members to receive remediable service statements, to provide for members who have made additional voluntary contributions and for members who have already benefited from an immediate detriment remedy.

Where it is particularly important that scheme regulations are consistent, the Bill will require them to be made in line with Treasury Directions. The powers to make scheme regulations are explained in the Delegated Powers Memorandum prepared by HM Treasury for the Delegated Powers and Regulatory Reform Committee.

**ADDITIONAL AREAS****Q24: What is the cost of these changes on public finances?**

A: The government currently estimates that removing unlawful discrimination back to 2015 will cost on average around £2.5 billion for each year of the remedy period, in additional future pension payments to members of unfunded pension schemes (excluding the judiciary). This equates to approximately £17 billion for the remedy period. This cost will be spread over decades, as increased pension payments during a member's retirement.

Legislating to close the remedy window in 2022 and placing members in the reformed schemes from 2022 caps these costs.

**Q25: Will these pension changes result in any tax changes for members?**

A: The vast majority of members will see no changes to their tax position or will receive a refund as a result of the remedy.

In some cases, individuals may pay higher Annual Allowance charges, but typically only where their projected pension at retirement has increased. Similarly, some members that are already in receipt of their pension may need to pay additional Lifetime Allowance charges when the total value of their pension has increased.

Some members, including most fire scheme members, may also face changes in their contribution rates, which may also affect their income tax liabilities.

Where a member's tax liability does increase, this will not exceed what they would have paid had they always been a member of the scheme they are moving into or receiving equivalent benefits.

**Q26: In the Written Ministerial Statement released on 20<sup>th</sup> March 2020, it mentioned that it would be helpful for members to retain their tax paperwork for 2015/16, is this still the case?**

A: Yes, dependent on the eventual policy, the member may need the relevant paperwork to help them access appropriate compensation.

Therefore, it would be helpful if people kept their paperwork related to tax from April 2015 onwards (and April 2014 in respect of members of the LGPS England and Wales).

This would include all self-assessment returns, P60s, the annual statements from your pension scheme administrator and documents relating to any other personal or occupational pension schemes.

**Q27: Will the remedy require individuals to undertake extensive paperwork to ensure they receive appropriate compensation, even though this is the government's mistake?**

A: Where possible, the government, HMRC and schemes will take proportionate steps to minimise the administrative burden on members, but it will not be possible to completely remove individuals from this process in all cases.

A member's tax position is unique to their personal circumstances and they alone may hold some of the data necessary to correct some elements of their tax position, particularly regarding the AA. Nonetheless, the government acknowledges the need to provide clear and accurate communications and information to members going through this process.

The necessary tax corrections following the implementation of the deferred choice underpin will still place an administrative burden on some individuals, particularly those affected by the annual allowance.

**Q28: What is the compensation scheme and how will it work?**

A: The remedy attempts to put people in the right position directly; but sometimes it cannot, i.e. due to interactions with tax system. Where this happens, members will be compensated.

Compensation payments may be made to pension scheme members via application as a result of overpaid tax charges and where this cannot be repaid directly by HMRC. Where contributions have also been overpaid, schemes will provide direct compensation to members, as well as for instances where members may need independent financial advice to resolve their compensation arrangements. These overpayments would have happened unintentionally through the remedy of the discrimination.

**Q29: Will non-claimants receive injury to feelings compensation alongside these retrospective pension changes as claimants will?**

A: A deferred choice underpin will apply to all eligible scheme members regardless of whether they have made a legal claim. Members do not need to submit a legal claim to benefit from these changes.

Any further legal claims for compensation made by claimants in respect of their individual circumstances will be decided by the courts. Remedy hearings for the claims against the firefighters' pension scheme (known as the Sargeant case) are underway. We are unable to comment further on ongoing litigation.

**Q30: How has COVID-19 affected the project?**

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