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HM Treasury

PSP&JO Bill Introduction Comms Briefing

Contents page

Top lines

1. The Public Service Pensions and Judicial Offices Bill 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.
2. 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.
3. The main elements of the Bill are:
    - Implementing 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 unfunded 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 main unfunded schemes 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 and Local Government Pension Scheme 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.
    - Raising the mandatory retirement age of judicial office holders from 70 to 75.
    - Placing judicial pay protection and the power to set allowances on firmer legal footing thereby protecting judicial independence.
    - Establish a new UK Asset Resolution (UKAR) Limited pension scheme.
4. The Bill will provide public service workers with greater certainty of their benefit entitlements. It ensures that public servants receive guaranteed pension benefits, but on a fairer basis, and in a way that ensures that they are affordable and sustainable into the future.
5. 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.

Key messages

6. Following negotiations with trade unions, the coalition government agreed to allow those within 10 years of retirement in the main unfunded schemes to remain in their existing

pension schemes when reformed schemes were introduced in 2015. The Court of Appeal found this to be discriminatory against younger members of the judicial and firefighters' pension schemes. The government has taken steps to remove the discrimination across the public service schemes.

7. 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.

8. 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.

9. 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.

10. The Bill will also ensure that corresponding changes are made in the Judicial Pension Schemes and Local Government Pension Scheme to reflect their different arrangements. The judiciary will be offered an "immediate choice" in 2022 as the respondents to the Ministry of Justice's consultation supported an earlier decision.

11. In a related announcement, 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 of the 2016 valuations, but any improvements that are due will be delivered.

Further detail on McCloud measures

12. Bespoke remedy measures are required for the Judicial Pension Scheme and Local Government Pension Scheme (LGPS) because of the unique arrangements within those schemes.

    a. The judiciary will be offered an "immediate choice" of the benefits they wish to receive in 2022 as the respondents to the Ministry of Justice's consultation supported an earlier decision

    b. In the LGPS, 'underpin' protection will be extended to younger qualifying members who were the subject of the discrimination found in the McCloud and Sargeant cases. Eligible members are those who were active in the LGPS on 31 March 2012 and have membership of the career average scheme without a continuous break in service of five years or more. The period of protection will apply for the LGPS England and Wales from 1 April 2014 to 31 March 2022, but will cease earlier where a member leaves active membership or reaches their final salary scheme normal retirement age (normally 65) before 31 March 2022. For LGPSs in Scotland and Northern Ireland any period of protection would begin from 1 April 2015, as their schemes were reformed from that later date, but also end by 31 March 2022.

13. For the remaining pension schemes, in February 2021 the government announced the implementation of the **'deferred choice underpin'**, which was the approach favoured by the majority of respondents to HM Treasury's consultation. This means those who were members of a public service scheme immediately before 1 April 2012 and were subsequently moved into the reformed pension scheme on or after 1 April 2015, will firstly be placed back into their legacy pension scheme in relation to any continuous period of service up to 31 March 2022.
14. All members with relevant service in the legacy schemes between 1 April 2015 and 31 March 2022 will receive a choice either shortly before they retire or, if they have a pension in payment, as soon as practicable once the legal provisions are in force. That choice will be whether to take legacy pension scheme benefits or reformed scheme benefits in relation to their service over that period.
15. Allowing individuals to make their choice at the point their benefits are paid or as soon as practicable thereafter means they will be able to make their decision knowing what their entitlement will be under either option, reducing the risk of the member making the wrong decision for them. Individuals will be provided with information to inform their choice.
16. For those eligible members who have retired before the changes are introduced, their choice will be retrospective and backdated to the date payment of their benefits relating to service between 1 April 2015 and 31 March 2022 commenced. The Bill also contains provisions to ensure that members who have already exercised a choice on an "immediate detriment" basis are treated consistently.
17. In addition to the measures set out above, from 1 April 2022 all active members, regardless of age, will be members of the reformed schemes and the legacy schemes will be closed to future accrual. This ensures the government's aims of rewarding hardworking public servants as well as ensuring schemes are sustainable and affordable in the future are fulfilled.
18. In a related announcement made in February 2021, the government decided to waive the impact of any ceiling breaches that arise as part of the 2016 cost control valuations. It would be inappropriate to reduce member benefits based on a mechanism that is not working as intended, as indicated by the Government Actuary following his review of the mechanism. Nevertheless, the government is clear that any benefit increases due as a result of any floor breaches will be delivered. This means that no member will see a reduction in benefits as a result of the 2016 valuations, but any improvements that are due will be delivered, effective from 1 April 2019.

Further detail on judicial measures

19. The judiciary has been facing unprecedented issues relating to recruitment and retention. Many judges take significant pay reductions to join the judiciary, and all are prevented from re-entering private practice. Because of these unique circumstances, members of the judiciary will be transferred into a reformed pension scheme in April 2022. This will ensure that the government can recruit and retain the right number of judges, which is vital to the running of the legal system.

20. The measures in the Bill on judicial pay will introduce powers which provide the government with the ability to pay allowances to judicial office holders, enabling greater pay flexibility and providing options to recognise judicial office holders taking on temporary additional responsibilities where needed for the effective administration of justice.

21. Raising the judicial mandatory retirement age, which was set for most judicial office holders at 70 over 25 years ago, to 75 will help retain judicial expertise for longer and attract a greater number of candidates from diverse backgrounds. There are a number of consequential and related measures which will help to further support judicial resourcing and provide greater fairness across the judiciary.

Further detail on UKAR measures

22. This Bill includes provides powers to establish new public pension schemes for the beneficiaries of the existing Bradford & Bingley and Northern Rock Asset Management pension schemes, which are currently housed under UK Asset Resolution (UKAR). Creating these new arrangements , which will involve a new unfunded public scheme for the defined benefit pensions, gives the members of the B&B and NRAM schemes reassurance that their pensions will be secure in the long term and will allow UKAR to be wound up sooner.

23. The Bill includes requirements that the pension benefits under new schemes should be at least as good as they were under the B&B and NRAM schemes.

24. Following the transfer of the members to the new schemes, the existing funded defined benefit schemes will then be defunded. This will reduce public sector net debt (PSND) by £175m in 2023-24.

FAQs on core McCloud measures for schemes

The questions below are **useful to include on pension scheme websites** to provide more information to individuals should they wish to find out more about the government's response. Where necessary these have been updated in line with changes made through the Bill, and new content marked in **purple**.

1. **Why did the Government's reforms to the main public service pension schemes lead to discrimination?**

    - Following negotiations with the trade unions, the 2015 public service pension schemes 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.

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

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

3. **What steps has the government taken so far to address the discrimination?**

    - Since the judgment the government has been working on different methods 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.

4. **What is a deferred choice underpin and why has the government chosen this approach?**

    - 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 members, or members who were originally protected, near retirement, they will 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.

- By deferring the choice until shortly before retirement, it 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 career, 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.

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

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

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

- The differences between the legacy and reformed pension schemes mean the set of benefits that is best for members depends on personal circumstances and preferences. This is why the 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.

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

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

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

- All public service pension schemes have different arrangements, however, the main changes between the legacy and reformed schemes for most schemes included a change to career-average pension schemes from final salary and an increase in normal pension age.
- The change to career-average means members' pensions are now calculated on their average salary throughout their career as opposed to their final salary.
- The reformed schemes were designed to make public service pensions more affordable and sustainable for the future, while still ensuring public servants received appropriate pension provision at 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. Although some members are better off in legacy schemes, the reformed schemes are more beneficial for others, particularly many lower paid members.

61. Will I lose all of my final salary benefits?

- 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.

62. Will members who had 'tapered protection' also be asked to choose between legacy and reformed scheme benefits?

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

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

63. How will people who retire before the introduction of the deferred choice underpin be treated?

- Members who have retired before the DCU 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 DCU. 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 DCU 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. So, for example, in cases where there are interactions with the tax system, perhaps where members have incurred or will incur tax chargers 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 DCU.
- There are still complex issues to be resolved before schemes are in a position to process cases on a consistent basis - further updates 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 their pension award relating to the remedy period was originally made.

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

- Where an eligible member has died since 1 April 2015, schemes will review these cases as a priority. Where the member retired from the reformed scheme, schemes will seek to revisit cases ahead of the introduction of the DCU 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.

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

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

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

- From 1 April 2022, all those who continue in service will be eligible to do so as members of their respective reformed pension schemes (i.e., those introduced in 2015, of which many are already members), regardless of age. This includes members who were previously covered by 'transitional protection'.
- This means that members will keep any service earned within the legacy schemes up until that date and will be able to access those benefits in the same way and at the same time as they are currently able to, but any pension benefits earned after will be within the reformed pension schemes.
- The legacy unfunded schemes will be closed to future accrual from April 2022.

67. Why is the government saying all members should be in the reformed pension schemes from 1 April 2022?

- The reasons for the 2015 reforms still stand: the government is committed to ensuring generous public service pension provision, but this has to be affordable and sustainable in the long term. The reforms aimed to achieve this, whilst also being fairer to lower and middle earners.
- The schemes that were introduced in 2014 and 2015 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. 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 reformed schemes, treating everyone equally in this respect, and ensuring the aims of the 2015 reforms are met.

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

- 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 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.

69. What is the compensation scheme and how will it work?

- 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, compensation arises to redress members.
- 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.

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

- 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. Scheme may implement provisions for deferred choice earlier where it is possible to do so.
- Following introduction of the PSP&JO 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 be 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.

71. What are the next steps after the legislation has been introduced?

- 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.

72. What detail will scheme regulations contain?

- 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.

73. How has COVID-19 affected the project?

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