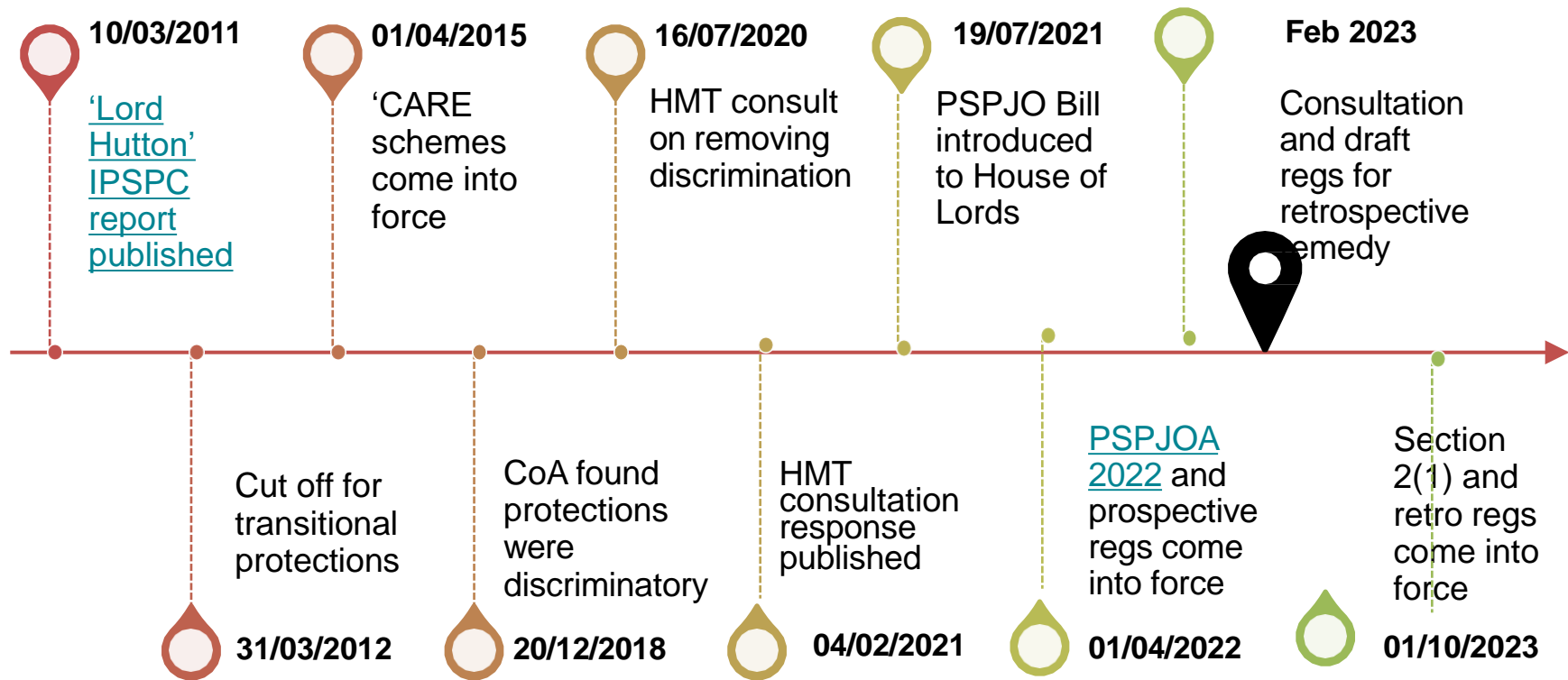


# Home Office consultation - Retrospective remedy



# Sargeant timeline



# Legislation

## Primary

- [Public Service Pensions and Judicial Offices Act 2022](#)
- [Finance Act 2022](#)
- [The Public Service Pensions \(Exercise of Powers, Compensation and Information\) Directions 2022](#)

## Secondary

- [The Police and Firefighters' Pension Schemes \(Amendment\) Regulations 2022](#)
- [The Public Service Pension Schemes \(Rectification of Unlawful Discrimination\) \(Tax\) Regulations 2023](#)

## Awaited

- The Firefighters' Pensions (Remediable Service) Regulations 2023 – [consultation now live](#)
- The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023 – Part deux?

# Revised Home Office timeline

McCloud Milestone	Date
Policy Development	April 2022 – February 2023
Pre regulation drafting phase	June 2022 – February 2023
Regulation drafting phase	September 2022 – July 2023
Retrospective Consultation launch	February 2023
Consultation analysis and finalise policy	July 2023
Publish consultation response	August 2023
Parliamentary signing and laying of regulations	September 2023
Administrative implementation phase	Ongoing – 1 October 2023
Retrospective Regulations come into force	1 October 2023

# The consultation

Pre-consultation engagement with SAB – PDDs and other documents held at <https://www.fpsregs.org/index.php/member-area/age-discrimination-remedy-provision-definition-documents>

Consultation seeks responses on the regulations needed to enact the second phase of the remedy, as set out in the PSPJOA 2022

- Roll-back
- Deferred and Immediate choice

<https://www.gov.uk/government/consultations/firefighters-pension-scheme-retrospective-remedy> - Consultation document sets out policy positions and draft Statutory Instrument

Only [ten questions](#) but may be further areas to comment on!

Consultation closes on 23 May 2023

# Structure of SI

## Parts

- Part 1 includes the commencement dates and extent, as well as definitions of terms (interpretation)
- Part 2 = Remediable service statements
- Part 3 = Decisions about remediable service
  - Opt-out CDs
  - Immediate choice
  - Deferred choice
- Part 4 = Divorce

## More Parts

- Part 5 = Voluntary contributions
- Part 6 = Transfers
- Part 7 = Special cases
  - Child pensions
  - Ill-health
- Part 8 = Immediate detriment
- Part 9 = Liabilities and payment
  - Interest
  - Compensation
  - Waiving liabilities
  - Contributions



# Eligibility

To be eligible a member must have “remediable service” [[Section 1](#)]:

- Service during the remedy period
- Pensionable under a legacy or reformed scheme
- A member or eligible to be a member on or before 31 March 2012
- No break in service greater than five years

If a member meets these conditions for one employment, they automatically meet them for any multiple employments



# Immediate choice members

Pensioner/ deceased immediately before 1 October 2023

Choice is irrevocable

Choice cannot be made unless an RSS has been provided

Member to make election within 1 year of receiving choice (31 March 2026)

Default is legacy but scheme manager can deem election

5.17 to 5.18 and 5.20 to 5.22 of consultation document

Part 3, Chapter 2 (Regulations 6 to 9)



# IC – the detail (PSPJOA)

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## Section 6

Allows pensions members and representatives of deceased members to make immediate choice to receive new (reformed) scheme benefits

---

Benefits are paid from legacy scheme NOT new scheme

---

Separate elections must be made for multiple employments

---

## Section 7

IC election must be made within 1 year of receipt of RSS

---

Election takes effect from date of retirement or date of death

---

Election is irrevocable

---

If pensioner member dies before making an immediate choice, representative will receive IC election

---

# IC – defaults

## Section 8

---

Default scheme if no election made is legacy scheme

---

Section 8 allows schemes to deem election made if new scheme benefits are more valuable – clarity required!

---

Intended to be exercised on a case-by-case basis. No blanket policies!

---



# Deferred choice members

Active/ deferred immediately before 1 October 2023

Member must notify scheme manager of intention to retire 6-12 months in advance

Choice can only be made within 12 weeks of DC-RSS being provided or day before benefits payable (if earlier)

Decision may be revoked up to date of payment and lapses if member dies

Default is legacy but scheme manager can deem election

5.13 to 5.16 and 5.19 to 5.22 of consultation document

Part 3, Chapter 3 (Regulations 10 to 15)

# DCU – the detail (PSPJOA)

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## Section 10

Allows active and deferred members only to make deferred choice to receive new scheme benefits

Benefits are paid from legacy scheme NOT new scheme

Separate elections must be made for multiple employments

---

## Section 11

Scheme rules must set deadline for deferred choice election

Must be no earlier than one year before day new scheme benefits expected to become payable – clarity required!

Election takes effect from date of retirement (or death)

If member dies before retirement/ DIP, representative will receive deferred choice election

# DCU – defaults

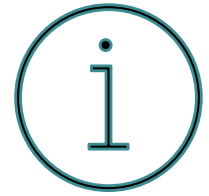
## Section 12

Default scheme if no election made is legacy scheme

More likely for active members to engage with process

Section 12 allows schemes to deem election made if new scheme benefits are more valuable – clarity required!

Intended to be exercised on a case-by-case basis. No blanket policies!



# Interest

Payable to or by members in specific circumstances

Rates and periods set by HMT Directions

Proposed regulations state that interest should be applied in line with the Directions

5.23 to 5.32 of consultation document

Regulation 55

# Directions: Interest and process

Section 26 PSPJOA 2022 allows for scheme regulations to be made to:

- Require payment of interest on relevant amounts (to and from the scheme)
- Determine the process for making payments (plus interest)

This could include:

- When and how amounts should be paid e.g. by instalments
- When amounts may only be paid on application
- Netting off of amounts owed to and from the scheme
- Rights of appeal

Under direction 13, scheme rules must operate in accordance with directions 14 (rates), 15 (periods) and 16 (other: inc. IDRPs)

# 14-15. Interest: rates and periods



Compensation (Part 4 tax losses)

- Calculated in line with [the Taxes \(Interest Rate\) Regulations 1989](#) as if amount were overpaid tax



Amounts due from member to scheme

- NS&I Equivalent Savings Rate
- From date overpaid benefits were paid to date of payment
- From date contributions due to date of payment
- Some discretion re: start date
- Compounded daily



Amounts due from scheme to member

- On certain amounts depending on timing: rate fixed by [Judgments Act 1838](#) – currently 8%
- From ‘mid-point’ to 28 days after RSS (conts/pension)
- From date of PCLS to 28 days after RSS
- Direct financial loss
- Simple interest



Amounts due from scheme to member

- On certain amounts depending on timing: NS&I Equivalent Savings Rate
- Compensation for contributions under DC election, from date due to date of payment
- Other conts/pension/ LS more than 28 days after RSS
- Compounded





# ABS/ RSS

All members must receive a remediable service statement (RSS) in line with:

- [Section 29 PSPJOA](#)
- [Direction 20 HMT Directions](#)

Different statements required for different cohorts with different needs, but all must include information contained in Act/ Directions

All statements provided within 18 months of 1 October 2023 in line with [RSS timetable](#)

5.33 to 5.41 of consultation document

Regulation 3

# Section 29 PSPJOA

Section 29 of the PSPJOA 2022 deals with remediable service statements

- Section 29(5) states RSS must include legacy AND reformed benefits and instructions for elections
- Section 29(7) requires the scheme rules to state that an RSS must be provided on/ before the “relevant date”
- Section 29(10) confirms that the relevant date is 18 months after section 2(1) comes into force – or later at the scheme manager’s discretion
- Section 2(1) will come into force on 1 October 2023 = RSS to be issued by 1 April 2025
- Section 29(8) requires RSS for active members annually; deferred members on request (one request per 12 months)

# HMT Direction 20

Direction 20(1) sets out that, in addition to the provisions of section 29(5), an RSS must include:

- Corrections to benefits, including interest and process
- Corrections to contributions, including interest and process
- Any changes as a result of treatment of voluntary contributions under section 20(1)
- Additional rights and options in relation to any TV out
- Any changes as a result of treatment of transfers in under section 21(1)(b) to (e)
- Explanation of revised tax liabilities
- Reference to PSS (if applicable) and signpost to further info
- Description of any other interest (e.g. on compensation)
- Provisions for CD under [section 5](#) (opted out service)
- Any specific information needed in respect of IHR
- Right of appeal (IDRP)

Direction 20(2) – RSS must be combined with ABS except for first issue

# Four types of RSS

## IC-RSS

- Pensioners retired between 1 April 2015 and 1 Oct 2023 (not ID)
- Deceased between 1 April 2015 and 1 Oct 2023 (includes active, deferred, pensioner)

## ABS-RSS

- From 1 Oct 2023, active members provided annually with or included on ABS
- From 1 Oct 2023, deferred members must receive an ABS-RSS, then 'on demand'

## DC-RSS

- Active and deferred members at DCU date (after 1 Oct 2023)
- Active and deferred members who die after 1 Oct 2023 – beneficiary to make DCU election

## CD-RSS

- Members making a contingent decision claim
- 18 months from point claim is successful
- May be in addition to another type of RSS



# Transfers

Section 21 PSPJOA – rights can be varied or extinguished via scheme rules

Transfers do not roll-back to legacy scheme at implementation

Choice made at retirement/ point of election

If TV cannot be credited to legacy scheme (e.g. FPS 1992 member or exceed service cap), value will be retained in FPS 2015 or actuarially compensated

5.42 to 5.44 of consultation document

Part 6 (Regulations 30 to 47)

# Transfers – CETV

Before 1 October 2023

- CETV out – recalculated and difference paid to receiving scheme or compensation made (regulation 32)
- CETV in – comparison of transfer in legacy/ reformed for RSS. Additional TV payment from PSPS can be accepted (regulation 33)

On/ after 1 October 2023

- CETV out – calculate on legacy and reformed basis (regulation 35)
- CETV in (PSPS) - comparison of transfer in legacy/ reformed for RSS regulation 36)

# Transfers – Club

## Before 1 October 2023

- Club out – recalculation on legacy and reformed basis, calc provided to receiving scheme. Difference only paid if LGPS (regulation 37)
- Club in – Adjustment to TV can be accepted. Comparison of transfer in legacy/ reformed for RSS. (regulation 38)

## On/ after 1 October 2023

- Club out – calculate on legacy and reformed basis, highest value paid (regulation 40)
- Club in - comparison of transfer in legacy/ reformed for RSS regulation 41)



# Added Pension (AP)

No facility to convert AP at roll-back to equivalent Added Years in the legacy schemes due to conditions of purchase (e.g. service cap)

All members given a 'refund' of contributions = compensation (less tax relief plus interest)

5.45 to 5.47 of consultation document

Regulation 26





# Contributions

Adjustment of contributions required at roll-back for all active/ deferred unprotected/ taper members (DC)

Difference can be paid or refunded **in full** EITHER at roll-back or at any point based on RSS position, but **MUST** be settled at retirement

Adjustment of contributions required at point of election for IC members – payment within 6 months of notification

No option for periodical contributions

5.48 to 5.62 of consultation document

Regulations 63 and 64 (Payment of net liabilities)

# GAD needs you!



- GAD calculator in development for contributions – will include adjustments for tax relief and interest
- Plus looking at appropriate wording for RSS
- Volunteers needed (payroll and admin) to test data inputs and points of failure



# Ill-health retirement

## Relates to IC members only

- Member to be treated as meeting equivalent criteria under alternative scheme (Regulation 50(1))
- Original decision should not be reopened (Regulation 50(2))
- As some members may also be entitled to a different benefit under the alternative scheme, reassessment needed in certain circumstances (Regulation 51)
- Regulations do not appear to deal with members who were dismissed on capability

5.64 to 5.68 of consultation document

Regulations 49 to 52

# Re-assessments - FRAs

To make the process of remedy implementation more streamlined and cost effective, only the following assessments should need referral to an IQMP for a further opinion on ill-health entitlement under the alternative scheme:

- Fully protected FPS 1992 members who have been ill-health retired on a lower tier ill-health pension and **need to be assessed against FPS 2015 lower tier ill-health criteria**
- Fully protected FPS 1992 members who have been ill-health retired on a lower and higher tier ill-health pension and **need to be assessed against FPS 2015 lower tier and higher tier ill-health criteria**
- Transitional FPS 1992 members who have been rejected for ill-health retirement under FPS 2015 (single source ill-health arrangements) and **need to be assessed under the FPS 1992 lower tier and higher tier ill-health criteria**
- Transitional FPS 1992 members who have been ill-health retired on a lower tier pension under FPS 2015 (single source ill-health arrangements) and **need to be assessed under the FPS 1992 lower tier and higher tier ill-health criteria**

All other assessments should only require a paper exercise to work out whether the scheme member qualifies for ill-health retirement under the alternative scheme.



# Abatement

Affects members who've retired in the remedy period (IC)

No changes to policy or scheme regulations

Members may be subject to new or increased abatement at roll-back

Overpayments should be recovered and underpayments made good

RSS to detail how abatement applies in each scheme

5.69 to 5.75 of consultation document



# Contingent decisions – opt outs

Claims for opt outs during remedy period and 6 pay periods prior automatically accepted

Optant outs before that need to provide evidence that decision was due to reforms

Claim can be made by “beneficiary”

Cases of opt out before 12 March 2012 will be refused

5.81 to 5.85 of consultation document

Regulation 5

# Contingent decisions – others

## Voluntary contributions

- Scheme manager discretion to allow retrospective AY contract, if eligible during remedy period
- Paragraphs 5.86 - 5.89; regulation 28

## Transfers

- Allows member to revisit transfer decision during remedy period
- Window for new decision
- Reversal will require agreement from sending/ receiving scheme
- Paragraphs 5.90 - 5.92

## General

- Template or bespoke form?
- How to alert members to the claim process?
- Evidence and consistency?



# Divorce

Section 19 PSPJOA makes provision for pension credit members (PSO) only

- Credit can be adjusted based on assumed election
- Credit cannot be based on taper-protection position

Pre-implementation – CETV recalc against alternative scheme and additional credit paid to PC member in line with original share (no recovery of overpayments)

Post-implementation

- Active/ deferred – CETV based on the greater of legacy or reformed scheme (not affected by DCU)
- Pensioner – CETV will reflect member choice

5.93 to 5.100 of consultation document

Part 4 (Regulations 16 to 25)





# Bereavement

If member dies before making an election, a representative may make a choice

Where benefits have already crystallised, decision cannot be revoked

Eligible decision makers set out in a Schedule to the remediable regulations

Child pensions will not be reduced if representative is not the legal parent/ guardian (Regulation 48)

5.101 to 5.108 of consultation document



# Reducing or waiving liabilities

Liabilities arising from contributions must be adjusted for tax relief (Regulation 59)

Liabilities arising from corrections of contributions or benefits can be reduced or waived in line with HMT Direction 4 (Regulation 60)

Compensation in respect of FPS 2006 contributions can be retained by scheme with member agreement – agreement lapses at point of election or when rescinded (Regulation 61)

5.109 to 5.112 of consultation document

# HMT Direction 4

[Section 18 PSPJOA 2022](#) – member liability can be reduced or waived under sections 14 to 17 (correction of benefits and correction of contributions) with particular reference to tax relief

Scheme liability can be waived under section 16: facility for FPS 2006 contributions to be retained until a DC election is made (18(8))

## Regulations made:

- Must ensure that scheme manager has regard to member circumstances (examples are listed)
- Should presume amounts are recovered unless it is 'uneconomic' to do so
- Allow amounts to be paid in instalments (26(1)(b) PSPJOA 2022)
- Must set out parameters for calculating tax relief – some discretion on establishing marginal rate
- Provide for IDRPs if member disputes tax relief amount



# Annex A

## Taxation

- [The Public Service Pension Schemes \(Rectification of Unlawful Discrimination\) \(Tax\) Regulations 2023](#)
- Some elements of policy remain in development, HMRC will provide guidance

## Compensation

- Paid to offset compensatable losses (direct and indirect)
  - Part 4 tax loss
  - Direct financial loss
- Set out in [HMT Directions](#)
- Regulations 56 and 57

# List of consultation questions (1-5)

1. **In and out of scope**: Do the proposed amendments to scheme regulations clearly define which members of the firefighters' pension schemes meet the criteria to be eligible for the remedy?
2. **DCU timing of RSS**: Do the policy proposals about the timing of when a scheme member can request an RSS in anticipation of retirement strike the right balance between a suitable period to make a decision, proximity to retirement date and any administrative considerations?
3. **Ill-health Retirement**: Do you think the proposed arrangements for members that qualify for ill-health retirement during the remedy period (1 April 2015 – 31 March 2022) may cause any adverse impacts?
4. **Added pension**: Do you think the policy proposals in relation to scheme members with added pension puts all eligible members in the same position?
5. **Transfers**: Do you think that the policy proposals that transfers that came into the 2015 reformed pension scheme will be held in the 2015 reformed pension scheme until the point of decision achieves the policy intention of preserving transfer rights?

# List of consultation questions (6-10)

6. **Bereavement**: Do the proposed amendments to scheme regulations achieve the policy intention of ensuring that the resulting ‘member representative’ can make an immediate choice or deferred choice in relation to the remedy period service of a deceased member?
7. **Contingent decisions**: Do you think that the proposals with regards to contingent decisions give members opportunities to revisit pension benefit decisions taken during the remedy period?
8. Are there any other areas which you think should be addressed in these regulations in order to ensure that all eligible members receive a choice of pension benefits at their point of retirement, for the period for which the discrimination existed (1 April 2015 - 31 March 2022) on 1 October 2023?
9. Are there any additional points not covered in this consultation paper that need to be considered as part of the proposed amendments to scheme regulations?
10. Do any of the proposed amendments unlawfully discriminate against a particular protected characteristic, fail to advance equality of opportunity between those who share a protected characteristic and those who do not, or fail to foster good relations between people who share a protected characteristic and those who do not?

# Booking now live!

LGA/ NPCCC data conference 17 May 2023

18 Smith Square, London



# Any questions





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**Thank you for listening!**

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