



Suspension of Broad Comparability assessments by the Government Actuary's Department ("GAD")

Questions & Answers

Introduction

Following the Written Ministerial Statement on the McCloud judgement on 25 March 2020, GAD have been reviewing the way broad comparability certification (including the certification of passport certificates) is undertaken, particularly the impact on pension scheme benefits arising from the McCloud judgment. GAD has decided to temporarily suspend its certification of broad comparability while we fully consult with schemes and other stakeholders about how to proceed. The formal consultation document has now been issued by HMT and provides further information

This document has been prepared to explain why this decision has been taken and answer some of the questions you might have.

Background

Following a review of the public service pension schemes by the Independent Public Service Pensions Commission, initially reported on in October 2010, the public service pension schemes were reformed. New career average re-valued earnings schemes were put in place, typically with effect from April 2015.

Members who were within 10 years of their Normal Pension Age (NPA) on 1 April 2012 qualified for transitional protection – meaning they continued to accrue benefits in the legacy schemes beyond April 2015. Some schemes also provided 'tapered protection'. This involved members who were slightly more than 10 years from their NPA on 1 April 2012 remaining in the legacy schemes for a period of time after April 2015, before moving into the reformed schemes.

Following claims brought by judges and firefighters, in December 2018 the Court of Appeal ruled that the transitional protection constituted unlawful age discrimination – referred to as 'the McCloud judgement'. In July 2019, in a Written Ministerial Statement to Parliament, the government confirmed its intention to remedy the difference in treatment across all of the main public service pension schemes.

In March 2020, in a further Written Ministerial Statement to Parliament, the government set out that in order to do this it was considering proposals which would allow relevant members to make a choice as to whether they accrued service in the legacy or reformed schemes for periods of relevant service, depending on what is better for them.

On 16 July 2020, the Chief Secretary to the Treasury released a consultation document "Public service pension schemes: changes to the transitional arrangements to the 2015 schemes" detailing, amongst other things, the government's proposals to deal with the discrimination issues identified by McCloud, and future pension provision for public service employees¹.

¹ While this consultation document only covers the pension schemes covering the NHS in England and Wales, NHS Scotland, Teachers in England and Wales, Teachers in Scotland, Fire in England, Fire in Wales, Fire in Scotland, Police in England and Wales, Police in Scotland, Civil Service in Great Britain, UK Armed Forces, and the Civil Service (Others) scheme, a separate and similar consultation has been issued covering the Local Government Pension Scheme in England and Wales, and the equivalent scheme in Scotland. In addition, GAD understand that the public service pension schemes in Northern Ireland will be consulted on separately.



Questions and Answers

Q1 Why has this decision been taken now?

Broad comparability (“BC”) assessments carried out under Fair Deal 2013 and the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector (‘COSOP’) are carried out in accordance with Annex A of Fair Deal 2013. Annex A states that broad comparability should be assessed at the date on which the transfer of employment takes place, and “should take account of benefits and contributions under each scheme to which members have a right at the appropriate date, and should include allowance for any changes to those benefits and contributions which, before the appropriate date, had already been incorporated into scheme rules, regulations or other documentation, or which had been formally agreed and published in sufficient detail.”

The Written Ministerial Statement in March 2020 confirmed that changes would be made to the public service pension schemes following the McCloud judgement and we had to take a decision as to whether we had sufficient information to take the McCloud remedy changes into account in our BC assessments. The decision by GAD to suspend BC assessments was taken before the publication of the consultation document issued on 16th July 2020, which set out details of the proposed changes. We are now considering with schemes and stakeholders the extent to which proposed changes should be taken into account in broad comparability assessments, and a revised process for incorporating such changes.

Q2 How long will broad comparability assessments be suspended for?

The government consultation on changes to the transitional protections in the public service pension schemes is set to run until 11 October 2020. GAD are currently separately consulting with the respective scheme managers and key stakeholders on how broad comparability assessments are to be carried out in the light of the publication of the proposed changes.

Unfortunately, it’s not clear at this time as to how those discussions might progress. As such, it’s difficult to put a timescale on how long the suspension will continue for. We will update you as soon as possible once it’s clear that a way forward has been found.

Q3 What does this mean for us as an organisation and the affected staff?

There will be a delay in issuing the broad comparability assessment. Where compensation is required for the transferred staff (usually in the form of pay uplifts), this temporary suspension of broad comparability assessment will also delay when the staff start receiving those pay uplifts. In addition, any such pay uplifts need to be backdated to the date the staff transferred employment, and as such the delay will mean that any such backdating will be for a longer period of time.

Q4 What happens if some of the staff involved in the transfer of employment retire or otherwise leave service after the transfer of employment takes place but before the broad comparability assessment has been carried out?

Broad comparability assessments are carried out in respect of all staff who transferred employment at the transfer date, regardless of their position at the date of assessment. Where pay uplifts are recommended, the new employer is liable to pay those uplifts effective from the transfer date. Hence for those transferred staff who retire or otherwise leave service before the broad comparability assessment has been completed, backdated pay uplifts will still be required up to their date of leaving.

Q5 What about the work already undertaken on suspended broad comparability assessments?

Ultimately this depends on the outcome of our discussions with the scheme managers to the public sector pension schemes. Once a solution is known, it is likely that, to a certain extent, any work/calculations carried out to date can be built on.

Q6 What will this mean for the fee estimates given for broad comparability assessments to date?

Again, this ultimately depends on the outcome of our discussions with the scheme managers to the public sector pension schemes. For example, a solution where our current calculation routines need to be built on, will involve additional work and hence additional fees. We will provide an updated fee estimate once a way forward for broad comparability assessments has been agreed.

Q7 The transfer of employment hasn't taken place yet. Does this mean that we should put it on hold?

Whilst it is preferable to ensure that the pension arrangements proposed by the new employer are certified as broadly comparable before the transfer of employment takes place, this does not always happen. We recognise that pension issues are only one of many aspects that need to be considered when a transfer of employment is undertaken, and as such Contracting Authorities should determine their own position with regard to Fair Deal or COSoP and discuss with the relevant employer(s) as applicable.

Contracting Authorities may decide to proceed with future transfers of employment, accepting that a broad comparability assessment will not be undertaken before the transfer takes place. Contracting Authorities should speak to GAD with any particular questions about this.

Q8 What about the bulk transfer exercise that's due to take place once the broad comparability assessment has been completed?

The changes to transitional protection affect pension benefits accrued for the period 1 April 2015 to 31 March 2022 inclusive for staff who were members of a PSPS up to and on 1 April 2012 and still a member of a PSPS on 1 April 2015 (or that scheme's reform date if different). We are discussing internally and with schemes how the bulk transfer process can be carried out following the changes to these benefits. We will update you as soon as possible once it's clear that a way forward has been found.

Q9 Should I inform staff involved in the transfer?

If staff are expecting a BC certificate to be issued and shared, then it may be appropriate to update the staff to advise them that there is currently a delay in GAD being able to complete the BC assessment and that a further update on this will be issued once GAD have reached agreement with key stakeholders over the impact of the McCloud remedies. Please contact your usual GAD contact to discuss this and proposed wording.

Q10 What if I have other questions?

If you have any further questions relating to the suspension of the broad comparability assessment being carried out by GAD on your behalf, then please contact your usual GAD contact in the first instance.

References

Links to the various Written Ministerial Statements and the consultation document mentioned in this note are as follows:

- Written Ministerial Statement 15 July 2019: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-07-15/HCWS1725>
- Written Ministerial Statement 25 March 2020: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2020-03-25/HLWS182/>
- Consultation document on changes to the transitional arrangements to the public service pension 2015 schemes:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/900766/Public_Service_Pensions_Consultation.pdf
- Written Ministerial Statement 16 July 2020: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2020-07-16/HCWS380/>
- A GAD Technical Bulletin has also been published, which provides more detail on the changes:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901436/Public_Service_Pensions_update_-_a_GAD_technical_bulletin.pdf

Government Actuary's Department – 6 August 2020

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