

# McCloud Consultation update

Today the Government has announced a public consultation seeking views on how to remove the discrimination caused by the transitional rules which meant older Service Personnel (SP) remained in their legacy schemes when other, younger, service personnel were transferred to the reformed scheme in 2015. The public consultation seeks the views of all stakeholders. For the Armed Forces this is both external organisations and serving/retired personnel on an individual basis. The Government has always been clear that eligible SP will not lose out because of the discrimination, and the options proposed in the consultation are based on giving members a choice between legacy scheme benefits or reformed scheme benefits for the relevant period.

The consultation document published on [gov.uk](https://www.gov.uk), with HMT consultation communications also published on [gov.uk](https://www.gov.uk). The previous MOD update is [here](#). The consultation primarily seeks views on:

- which of two options to remove the discrimination between the period 1 Apr 15 and 31 Mar 22 is preferred; and
- the government's proposal that, with effect from 1 April 2022, all those who continue in service will do so as members of the 2015 schemes, with all legacy schemes being closed from that date.

In addition, there is a considerable amount of information clarifying and expanding on previous detail which will be of interest to eligible SP. The most significant are:

- To be eligible for the pension changes to remove past discrimination SP must have been in service on or before 31 Mar 12 **and** on or after 1 Apr 15. This includes those with a qualifying break in service of less than 5-years.
- Those who remained in their legacy schemes because they had Transitional Protection (TP) (known as Full Protection in the armed forces schemes) will also be given a choice of which scheme benefits they want to take for the relevant period.
- The remedy period will be from 1 Apr 15 – 31 Mar 22, or the period of paid service between these dates for eligible re-joiners and those who have retired before the end of the remedy period.
- Both the options under consideration will require SP to make a choice as to which scheme benefits they wish to receive for the period between 1 Apr 15 and 31 Mar 22. The AFPS administrators will not be able to decide on behalf of SP as they do not know the weight or priority an individual will place on available benefits in either scheme. SP will be given appropriate information to enable a decision to be made.
- The choice, once made, will be irrevocable, which means that it cannot be reviewed or changed at a later date.
- Once the consultation is complete the Govt will consider all responses carefully and make a decision on the approach for all the main public service pension schemes (including AFPS) and publish a response to the consultation.
- The cost control mechanism (or 'cost cap') for the 2016 public service pensions valuation was paused due to the value of pensions post 2015 being uncertain as a result of the McCloud case; as this can now be assessed, the cost control element of the 2016 valuation can now be completed. HM Treasury will set out the technical detail in directions.

## The Options:

The primary purpose of the public consultation is to seek views on two possible options to remove the discrimination during the period 1 Apr 15 to 31 Mar 22 (the remedy period). The two options are:

- (1) the Immediate Choice option; or
- (2) the Deferred Choice Underpin option.

The main features of each option are summarised in the table (below).

	<b>Immediate Choice</b>	<b>Deferred Choice Underpin</b>
Remedy Period	1 Apr 15 – 31 Mar 22	1 Apr 15 – 31 Mar 22
When would members make their choice?	Irrevocable choice made as soon as practicable after 2022.	Irrevocable choice made at the earliest point at which it is necessary to determine benefits payable. For the regular armed forces, this could be the immediate pension point or EDP point, or the point at which a pension becomes payable (e.g. retirement or ill-health).  Until the choice is exercised, all members would be deemed to have been in their legacy scheme for the remedy period.
What information would be provided?	Decision based on assumptions, for most. Assumptions such as date of leaving, promotions, future earnings, marriage, children etc will need to be made.  Schemes would provide information and online calculators for members to forecast their pension entitlement under both schemes.	Decision based on known entitlements.  Schemes would provide direct comparisons of actual entitlements under both schemes.
Benefits to members	Addresses the issue relatively promptly, giving certainty to members as to their pension arrangements for the remedy period.	Ensures members can make their decision based on actual entitlement to benefits rather than having to do it based on assumptions and forecasts, which may prove incorrect.

Important considerations for members	Decision based on assumptions, so some may choose the scheme that does not turn out to be most beneficial for them	Takes longer to address the issue so relative uncertainty over pension arrangements until members become entitled to a pension or EDP.  Some technical elements may be more complex to resolve.
Tax treatment for those over the annual allowance	A member's tax position would be corrected when they make their choice of benefits.  Where their decision means that they owe tax, this would be recouped for the 4 tax years before their decision point. Where they have overpaid tax, this would be refunded entirely, without a time limit.	Non-transitionally protected members' tax may be adjusted in 2022, as they will be deemed to have been in the legacy scheme for the preceding seven years.  All members' tax positions would then be adjusted if they choose reformed scheme benefits at the point they exercise the deferred choice. If this results in additional tax charges on any additional accrual, this will be compensated.

Tools will be developed to enable SP to assess the difference in monetary value of the different pension schemes during the remedy period. In addition to the pension/EDP value there will be impacts on death, survivor and ill-health benefits. Worked examples are included in this update to enable SP to visualise the type of impacts that could occur. These are representational only, and should not be relied upon - every SP will have a different financial outcome, based on their own individual circumstances.

The consultation document also comments on the impact of pension abatement (for those who are re-employed in the Armed Forces while in receipt of legacy pension benefits) during the remedy period as, whichever option is adopted, the outcome will be retrospective over the period 1 Apr 15 to 31 Mar 22. For those who have re-entered Regular or Reserve Service and are subject to abatement of pension, any credit of pension due following reassessment will be paid. However, any debit of pension following reassessment will not be recovered from SP.

The consultation document provides further detail on how many issues will be treated as part of the remedy process. These include, but are not limited to, additional voluntary contributions/added pension, pension sharing on divorce, club transfers in or out of public service pension schemes, interest, contingent decisions (decisions based on policy changes that later proved to be unlawful) and ill-health. It also has a comprehensive annex on how tax will be treated for those who wish to see more detail than is summarised here.

It will take time to develop comprehensive policy solutions, amend the scheme rules (legislation), programme IT systems and be in a position to provide relevant details once a decision is made (potentially years rather than months). However, all adjustments will be made as soon as administratively possible and backdated to 1 Apr 15. Until policy and legislation is changed DBS will not be in a position to advise SP on likely outcomes and impacts. **It is requested that Service Personnel, serving or veterans, wait for further updates from MOD which will enable DBS resource to support MOD policy development and delivering policy changes.**

## Representational examples:

These examples have been compiled by manipulating dates of birth on the pension calculator to generate a transitional protection (full protection) example and a non-transitional protection (non-full protection) example, to provide worked examples on pension/EDP income and lump sum values only, without indexation. Whilst every effort has been made to ensure that all other calculation inputs remain consistent and correct the examples below are indicative only and should not be relied upon for making assumptions on changes to personal pension values. There are significant differences between ill health and death benefits between the AFPS 75, and AFPS 05 and AFPS 15; all relevant information will be provided to SP prior to any choices being made.

AFPS 75 example OR9 (Final Salary £51,801) Joined 8 Apr 85, Leaves 31 Mar 22	
AFPS 75 benefits 8 Apr 85 – 31 Mar 22	AFPS 75 benefits 8 Apr 85 – 31 Mar 15 AFPS 15 benefits 1 Apr 15 – 31 Mar 22
Pension income - £24, 580 Pension lump sum - £73,741	75 Pension & EDP income - £22,853 75 Pension & EDP lump sum - £75,546 Pension income at SPA* - £27,072 (this is a combined total for the AFPS 75 and AFPS 15 pensions: a further lump sum can be generated from the AFPS 15 element) (*State Pension Age)

AFPS 75 example OF5 (Final Salary £98,910) Joined 1 Apr 86, Leaves 31 Mar 22	
AFPS 75 benefits 1 Apr 86 – 31 Mar 22	AFPS 75 benefits 1 Apr 86 – 31 Mar 15 AFPS 15 benefits 1 Apr 15 – 31 Mar 22
Pension income - £ 47,971 Pension lump sum - £ 143,913	75 Pension & EDP income - £45,816 75 Pension & EDP lump sum - £ 150,348 Pension at SPA* - £ 53,705 (this is a combined total for the AFPS 75 and AFPS 15 pensions: a further lump sum can be generated from the AFPS 15 element) (*State Pension Age)

AFPS 05 example OR6 (Final Salary £38,780) Joined 1 Apr 02, Leaves 31 Mar 22	
AFPS 05 benefits 1 Apr 02 – 31 Mar 22	AFPS 05 benefits 1 Apr 02 – 31 Mar 15 AFPS 15 benefits 1 Apr 15 – 31 Mar 22
EDP income - £ 5,540 Lump sum - £ 33,240 EDP income age 55 - £ 8,310 Pension income age 65 - £ 11,080 Pension lump sum – £ 33,240	Combined EDP income - £ 5,738 Combined lump sum - £ 34,160 Combined EDP income age 55 - £ 7,299 AFPS 05 pension/EDP 15 income (age 65) - £9,099 AFPS 05 Lump sum (age 65) - £21,606 Combined pension SPA* - £12,782 (this is a combined total for the AFPS 05 and AFPS 15 pensions: a further lump sum can be generated from the AFPS 15 element) (*State Pension Age)

AFPS 05 example OF3 (Final Salary £ 63,375) Joined 1 Apr 02, Leave 31 Mar 22	
AFPS 05 benefits 1 Apr 15 – 31 Mar 22	AFPS 05 benefits 1 Apr 02 – 31 Mar 15 AFPS 15 benefits 1 Apr 15 – 31 Mar 22
EDP income - £ 9,053 Lump sum on leaving - £ 54,321 EDP income age 55 - £ 13,580 Pension income age 65 - £ 18,107 Lump sum age 65 – £ 54,321	Combined EDP income - £ 9,267 Combined lump sum - £ 55,096 Combined EDP income age 55 - £ 11,818 05 pension/EDP 15 Income age 65 - £14,760 AFPS 05 Lump sum age 65 – £ 35,310 Combined pension at SPA* - £ 20,564 (this is a combined total for the AFPS 05 and AFPS 15 pensions: a further lump sum can be generated from the AFPS 15 element) (*State Pension Age)

## Ministry of Defence Questions and Answers:

### Q. How will I know which scheme to choose for the remedy period?

A. Irrespective of which option is taken forward by the Govt it will be incumbent on the pension scheme administrators to provide Service Personnel with information to enable them to make an informed decision. This will include the value of each element of the armed forces pension schemes, death and ill-health impacts, impact on tax etc up to the date the information is provided; any future value beyond that date would be a forecast. The Armed Forces are also developing a calculator to assist personnel in making their choice.

### Q. If I opt to stay in my legacy scheme from 1 Apr 15, will I stay there forever?

A. The government is also consulting on its proposal to close all legacy schemes and that all active members will be in their respective 2015 scheme from 1 April 2022.

### Q. Will I receive a tax bill if I change my pension scheme option?

A. The vast majority of SP will see no tax impact regardless of the choice they make. Some higher earners may have pensions tax adjustments, and these are explained more fully in Annex B to the Consultation document.

**Q. Why can't I make my choice now?**

A. At present no decision has been made on whether an immediate or deferred choice will be taken forward. Once this has been made it will take a considerable amount of time to change the law, the policy and the delivery mechanism. The most important element to any option is ensuring that SP have all the relevant information to enable them to make the best decision that supports them and their families.

**Q. I am leaving service before 2022. Will I need to wait to make my decision?**

A. An option cannot be given until legislative changes are implemented. Therefore, in the interim SP will leave on their current pension provision and an option will be given to those leaving as soon as practicable after the legislation is changed. Those who leave without making a decision will be given this choice as soon as practicable once the legislative changes are implemented and again any revised award will be backdated to the date the member's pension award was made.

## **Extract from Government Questions and Answers**

### **General**

**Q. What are the next steps after the consultation?**

A. Following the consultation, the government will publish its response and announce the final policy decision. Individual schemes will then draft and consult on their scheme regulations as we lay legislation in parliament to amend the Public Service Pensions Act to enable us to enact these changes.

**Q. How have the technical discussions fed into this consultation?**

A. The technical discussions allowed the government to hear and understand different stakeholders' views at an early stage. The proposals were still in an early stage of development at that point and the discussions provided the government with helpful information to further develop both of the proposals which are now included in the consultation.

**Q. What is the main purpose of this consultation?**

A. The consultation is the next step in the process of addressing the discrimination. The government has worked up two proposals for allowing members a choice of which set of scheme benefits they wish to have for the remedy period. The government would like to gather views on how these proposals will impact members and the responses the government receives back from this consultation will feed into the final policy decision.

**Q. Who is in scope of the consultation proposals?**

A. Scheme members who were in post on or before the 31 March 2012 and in post on or after the 1 April 2015 will be in scope of these proposals. This includes those members who are currently active, deferred or retired.

**Q. Will those protected by transitional protection also receive a choice between the new and old schemes?**

A. Members who were originally protected by the transitional protection (full protection for the armed forces) will also be provided with a choice of which scheme they would prefer to be a member of during the remedy period.

**Q. What is meant by the 'remedy period'?**

A. The remedy period is the time period for which members will be able to retrospectively choose which scheme they are to be a member of. It will run from 1 April 2015 which is when the reforms were introduced, until 31 March 2022 which is the point when treatment will have been equalised going forward.

**Q. Do members need to submit a legal claim to be eligible for these changes?**

A. No. Members do not need to submit a legal claim for these pension changes to apply. Both claimants and non-claimants who are eligible members of the relevant public service pension schemes will receive a choice of which set of scheme benefits they would rather have back to 2015. The government has committed to applying this across all the main public service pension schemes.

## **Retrospective Policy**

**Q. When will the retrospective policy be implemented?**

A. Removing the discrimination will take time, but the government is committed to ensuring that all eligible members are treated equally and are able to choose to receive benefits under the terms of either their legacy scheme or the reformed scheme. For most, this will not happen before 2022 but any payments will be backdated to 2015 where necessary.

**Q. When will those who are suffering immediate detriment see their benefits amended?**

A. The government is committed to resolving the position for those who retire before the proposed changes are made in 2022. Where possible members who retire before 2022 will be offered the choice of which scheme they want to retire under.

**Q. Which proposed option does the government prefer? Why has the government not expressed a preference?**

A. The government is consulting openly on both options: immediate choice and deferred choice underpin. The government acknowledges both options have their advantages and disadvantages. No decisions have yet been taken as to which option is preferable. That decision will not be made until the consultation process is complete.

**Q. 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.

**Q. Why are government asking members to make the choice between the different sets of pension benefits?**

A. The differences between the old and new pension schemes mean the set of benefits that is best for individuals depends on personal circumstances. We cannot simply extend transitional protection to all members and place them into the old schemes, because some members are better off in the new schemes. The government is unable to make this choice for members and so will instead provide members with information to allow them to make an informed choice whichever option is chosen as the government's final policy.

## **Tax**

**Q. Will these changes result in members receiving a tax bill that is larger than usual?**

A. The majority of members will see no change to their tax liabilities. A minority of members may see changes, which could be reimbursement or tax charges. In some cases individuals may pay higher AA charges, but typically only where their projected pension at retirement has increased. Individuals will only pay more tax where the benefits they have accrued in a year have increased. Those with significant pension accrual may see changes, which could be a reimbursement or in a small number of cases, tax charges.

**Q. Are the tax proposals allowing a tax break for some of the public service's' highest paid employees?**

A. No. The tax system will work in the usual way. Where the pension changes produce disproportionate tax results, we are stepping in and compensating individuals.

**Q. Why are you making people pay tax for benefits they may never receive?**

A. The tax system will work as usual for individuals benefiting from the proposed changes; the vast majority of individuals will see no change in their tax position.

**Q. In the WMS released on 20th March, it mentioned that it would be helpful for members to retain their tax paperwork for 2015/16, is this still the case?**

A. Yes. Depending 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. 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.

## **Prospective Policy**

**Q. Why are you trying to do the illegal reforms again? Why can't we stay in the old schemes until retirement?**

A. The 2015 reforms were not illegal. The way 'transitional protection' was implemented was found to be discriminatory. We are removing this by offering all affected members a choice of which scheme benefits they would like to have for the 'remedy period'. Many members have always been in the 2015 schemes. These schemes are progressive and fair. From 1 April 2022, all members will be in these schemes. By 1 April 2022 all members who were originally offered 'transitional protection' will have reached their Normal Pension Age. If they choose to continue to work after this, they can do so as a member of a reformed scheme, along with all other members, irrespective of the choice of scheme they make for the 'remedy period'.



**Q. Will members who were previously covered by ‘transitional protection’ also be moved into the new schemes?**

A. From 1 April 2022, all those who continue in service will do so as members of their respective reformed scheme.

**Q. If the Coalition’s pension policy failed – why are the government returning to those schemes?**

A. The reforms which were introduced in 2015 were progressive and increased fairness between the highest and lowest earners. The courts found that the ‘transitional protection’ arrangements gave rise to discrimination. The government has set out proposals to address this. The reasons for the 2015 reforms remain. After 1 April 2022, all members of the schemes covered by this consultation who are still earning pension benefits will do so in the reformed schemes, so will be treated equally in that respect.

## **Cost Control Mechanism**

**Q. What is the cost control mechanism?**

A. The cost control mechanism was introduced in 2015 with the public service pension scheme reforms. It is used within the valuation process to ensure the costs of public service pensions remain fair for all employees, employers and the taxpayer.

**Q. Why is the government making members pay the costs to rectify the discrimination against them?**

A. Proposals for addressing the discrimination identified by the courts essentially mean giving members a choice of scheme benefits. This will increase the value of schemes to members. The cost control mechanism was designed to include costs that impact the value of schemes to members, and so this will be included in the completion of the cost control process for the 2016 valuations.

**Q. How will the unpausing of the cost control mechanism affect the 2016 valuations?**

A. As the pause will be lifted, HM Treasury will set out in Directions the detail of how the cost control process element of the 2016 valuations will be completed.

**Q. Why is the government carrying out a review of the cost control mechanism?**

A. The then Chief Secretary to the Treasury announced in 2018 that the Government Actuary would undertake a review of the cost control mechanism, to assess whether it is meeting its original objectives. This was put on hold as the mechanism was paused. The government has announced that the pause will be lifted and has confirmed that the review will now proceed.

**Q. How will the 2016 valuations be affected?**

A. By taking into account this increased value of public service pensions that will result from members having a choice of scheme benefits for the ‘remedy period’, the cost control process will show greater costs than if they were not included. The government will consider how best to take forward the cost control mechanism outcomes for each scheme once the details of these are known.

**Q. Will members receive improvements to their benefits as expected from the 2016 valuations?**

A. HM Treasury will set out in the Directions the technical detail of how the re-started 2016 valuations will operate. Details will not be known until the process is complete. By taking into account the increased value as a result of the member choice, the cost control process will show greater costs than if they were not included. The government will consider how best to take forward the cost control mechanism outcomes for each scheme once the detail is known.

**Q. If these costs make schemes breach the ceilings, will members and employers see an increase to their contributions?**

A. HM Treasury will set out in the Directions the technical detail of how these costs should be taken into account. Details will not be known until the process is complete. By taking into account the increased value as a result of the member choice, the cost control process will show greater costs than if they were not included. The government will consider how best to take forward the cost control mechanism outcomes for each scheme once the detail is known.