



Home Office

PUBLIC SERVICE PENSIONS: FIREFIGHTERS' PENSIONS (AMENDMENT) REGULATIONS 2023

McCloud / Sargeant remedy: phase two (retrospective)

Government consultation 2023

This consultation begins on 28 February 2023

This consultation ends on 23 May 2023

About this consultation

- To:** This consultation is open to the public.
- We are particularly interested to hear from interested parties from the fire sector.
- Duration:** From 28 February 2023 to 23 May 2023
- Enquiries (including requests for the paper in an alternative format) to:**
- Email:
Firepensionspublicservicepensionsremedy@homeoffice.gov.uk
- Post:
Firefighters' Retrospective Remedy Consultation
Police Workforce and Professionalism Unit
Home Office
6th Floor, Fry Building
2 Marsham Street
London SW1P 4DF
- How to respond:**
- Please respond by 23 May 2023 using the online survey at:
<https://www.homeofficesurveys.homeoffice.gov.uk/s/LPA2YB/>
- If you cannot access or use the online survey, you can send your response to:
- Email:
Firepensionspublicservicepensionsremedy@homeoffice.gov.uk
- If you are a user of specialist accessibility software that is not compatible with the above options, you may post your response to:
- Fire Retrospective Remedy Consultation
Police Workforce and Professionalism Unit
Home Office
6th Floor, Fry Building
2 Marsham Street
London SW1P 4DF
- If you are unable to access an electronic version of the document, please write to the above address and a paper copy will be provided.
- Response paper:** A response to this consultation exercise will be published by the Home Office on gov.uk

Contents

1. Introduction	Error! Bookmark not defined.
2. Executive summary	5
3. Who do we want to hear from?	6
4. Retrospective changes to remove discrimination	7
5. Proposals to be consulted on	10
6. Public Sector Equality Duty (PSED)	29
7. Consultation questions	31
8. Conclusion and next steps	35
9. About you	36
10. Contact details and how to respond	38
11. Consultation principles	40
Annex A: Further Policy and Associated Factors	41
Annex B: Glossary of terms used in the consultation document	42

1. Introduction

- 1.1 The Public Service Pensions and Judicial Offices Act 2022 provides an overarching framework to allow public service pension schemes to remedy the impact of unlawful age discrimination. That discrimination arose due to certain transitional arrangements put in place when public service pension schemes (including the firefighters' schemes) were reformed between 2014 and 2016. Secondary legislation is also required to amend the rules of each affected public service pension scheme to implement the remedy for their members. The remedy was designed to be delivered in two stages: the first to bring the discrimination to an end (the prospective remedy) from 1 April 2022, and the second, to be implemented on 1 October 2023, to remedy the discrimination that had taken place between 1 April 2015 and 31 March 2022 (the retrospective remedy).
- 1.2 In the firefighters' pension schemes, the prospective remedy was implemented through the [Police and Firefighters' Pension Schemes \(Amendment\) Regulations 2022](#), which came into effect on 1 April 2022. Since that date, all firefighters have been members of the 2015 reformed pension scheme.
- 1.3 The second stage is to deliver the retrospective remedy. This consultation document sets out the background to this part of the remedy and an explanation of legislative and policy changes required to implement it. The retrospective remedy is complex and affects people in different ways. The Home Office would, therefore, welcome input from scheme members and fire service stakeholders to ensure that the final regulations and policies are based on the broadest possible understanding of how this remedy will affect members of our pension scheme.

2. Executive summary

- 2.1 This consultation addresses the changes being made to implement the 'retrospective remedy'. This involves amending scheme rules to remove the effect of the transitional protections seen between 1 April 2015 and 31 March 2022 ('the remedy period') and implement provisions for a deferred choice underpin (DCU). The DCU will give members a deferred choice of pension benefits at their point of retirement for the remedy period, which is the period during which discrimination took place. Eligible members will be able to choose to receive legacy pension scheme benefits or benefits equivalent to those available under the 2015 reformed scheme for service during the period 1 April 2015 to 31 March 2022.
- 2.2 Retrospective changes to regulations will also be made to correct any overpayment or underpayment of pension benefits or member contributions. This includes benefits or contributions paid to or by a member because of their choice. The regulations will facilitate the payment of appropriate compensation to address financial loss arising from the discrimination or operation of the remedy.
- 2.3 There are other areas where we are considering whether further amendments to the regulations may be needed, beyond those in the published draft Statutory Instrument being consulted on. The policy intent on those areas is set out below. When responding to this consultation, we ask you to presume that the draft regulations will reflect the policy intent as described.
- 2.4 The Home Office led informal monthly engagement sessions with firefighter employer and staff representatives between June 2022 and February 2023 on how the retrospective policy would be implemented for the firefighters' pension schemes. The aim of the sessions was to ensure stakeholders were given the opportunity to directly engage with the Home Office on understanding and implementing the provisions in [the Public Service Pensions and Judicial Offices Act \(PSPJOA\) 2022](#), [The Public Service Pensions \(Exercise of Powers, Compensation and Information\) Directions 2022](#) ('Treasury Directions'), development of HMRC remedy tax rules and the scheme specific policy for the firefighters' pension schemes. It also provided stakeholders with an opportunity to seek clarification on any aspects of the policy and feedback on identifying gaps or equalities issues when developing scheme specific policy and processes.
- 2.5 The retrospective remedy will come into effect from 1 October 2023. Firefighters' pension administrators will write to those whom the remedy affects to notify them of the changes and what action will be required of them.

3. Who do we want to hear from?

3.1 This consultation welcomes views from interested parties on the draft regulations and policy intent to implement the Retrospective Changes for the McCloud/Sargeant remedy. We are specifically interested in the views of groups that represent firefighters, their employers, and others responsible for implementing the changes.

3.2 A link to this consultation has been sent to the following groups:

- i. Fire Brigades Union
- ii. Fire Leaders' Association
- iii. Fire and Rescue Services Association
- iv. Firefighters' Pension Scheme Advisory Board of England
- v. Local Government Association
- vi. National Fire Chiefs' Council
- vii. The Fire Officers Association
- viii. National Association of Retired Firefighters

3.3 This list is not exhaustive or exclusive, and responses are also welcomed from members of the public with an interest in or views on the subject covered by this consultation.

4. Retrospective changes to remove discrimination

Public service reforms and the Court of Appeal judgment

- 4.1 In April 2015, the government introduced reformed public service pension schemes. The changes followed a fundamental structural review by the Independent Public Service Pensions Commission, chaired by Lord Hutton of Furness. As part of these changes, protection was provided to those members who were close to retirement, meaning that they would be allowed to remain in their legacy scheme or gradually transition to the relevant reformed public service pension scheme. For the firefighters' pension scheme, this applied to those within fourteen years of their normal pension age¹ (NPA). This policy was referred to as 'transitional protection' arrangements.
- 4.2 In December 2018, the Court of Appeal found that transitional protection unlawfully discriminated against younger members of the judicial and firefighters' pension schemes. Transitional protection was available to those nearest retirement, who were, by definition, older scheme members. It is important to note that the transitional protection element of the 2015 reforms was found to be discriminatory, not the reformed scheme itself.
- 4.3 In July 2019, the government confirmed that, in addition to the firefighters' pension scheme, it accepted the Court's judgment had implications for the other public service schemes that had similar transitional arrangements.

The remedy

- 4.4 On 16 July 2020, the government published a consultation entitled "Public service pension schemes: changes to transitional arrangements to the 2015 schemes". The consultation set out two proposed options for retrospectively removing the discrimination suffered by members who were not eligible for transitional protection due to their age and proposed that the legacy schemes would be closed to all members on 31 March 2022. In February 2021, the government published its response, confirming that the legacy schemes would close on 31 March 2022 and that affected members would be given a choice of which pension benefits they wish to receive for the remedy period (1 April 2015 to 31 March 2022) when those benefits are paid.

¹ To note, the 1992 Fire Pension Scheme England has no Normal Pension Age as such. Individual members can have a pension age based on their length of service and linked to, but not necessarily dependent on, age, or they can have a pension age that depends on their rank. This term NPA is used here as shorthand, and for this fire scheme means the different ages as used in the design of the original transitional protection.

4.5 The PSPJOA was introduced to the House of Lords on 19 July 2021. It received Royal Assent on 10 March 2022. The PSPJOA sets the framework for the retrospective remedy, including the deadline for all eligible members to be treated as having accrued service in the relevant legacy schemes for the remedy period by 1 October 2023, and contain enabling powers where needed.

4.6 The Home Office is required by the PSPJOA to introduce legislation and policies to implement the retrospective pension remedy in the firefighters' pension scheme by the 1 October 2023 deadline.

The remedy is being delivered in two phases:

- I. The prospective remedy, which has already been delivered and has been in force from 1 April 2022. The legacy schemes closed to future accrual on 31 March 2022 and all members who continued in pensionable service from 1 April were transitioned to the 2015 reformed scheme from that date
- II. The retrospective remedy, which is to be in force by 1 October 2023. From 1 October 2023, eligible members will be able to choose to receive a legacy scheme benefit or benefits equivalent to those available under the 2015 reformed pension scheme for remedy period service

4.7 The prospective remedy was achieved through the [Police and Firefighters' Pension Schemes \(Amendment\) Regulations 2022](#) and the PSPJOA. Between 8 November 2021 and 2 January 2022, the Home Office (as the Responsible Authority for the firefighters' pension schemes in England) consulted on proposed amendments to the Firefighters' Pension Scheme Regulations 2015 as the first phase of the remedy. The Home Office's response to the consultation was published on 8 March 2022.

4.8 From 1 April 2022, all firefighters who continued in pensionable service were transitioned to the 2015 reformed scheme, regardless of age. Legacy schemes (the Firefighters' Pension Scheme 1992 and Firefighters' Pension Scheme 2006) closed in relation to pensionable service after 31 March 2022. This marked the completion of the first, prospective phase of the remedy.

4.9 This consultation focusses on the second retrospective remedy phase. The secondary legislation referred to in this consultation will allow the provision for the retrospective remedy to be made. Eligible members will be able to choose to receive legacy pension scheme benefits or benefits equivalent to those available under the 2015 reformed scheme for service between the period 1 April 2015 to 31 March 2022.

4.10 For service between the period 1 April 2015 to 31 March 2022 new provisions will also enable the firefighters' pension schemes to:

- correct any overpayment or underpayment of pension benefits or member contributions already paid in relation to a member because of their choice
- facilitate the payment of appropriate compensation to address financial loss arising from the discrimination or operation of the remedy (for example, overpaid tax)

Further Policy and Associated Factors

4.11 Some additional information on further policy development and associated factors regarding tax and contributions which sits outside the scope of this consultation document is at Annex A.

Terminology

4.12 A glossary of other terms and definitions used throughout this document is at Annex B.

5. Proposals to be consulted on

The retrospective remedy

- 5.1 The Home Office intends to make and lay the amendments required to implement the retrospective remedy, pursuant to the requirements of the PSPJOA.
- 5.2 A draft set of regulations to ensure all eligible members (or their representative) receive a choice of which pension scheme benefits they would prefer to have for their remedy period service is attached to this consultation.
- 5.3 The impact of implementing the remedy will vary depending on individual members' circumstances. The firefighters' pension scheme will provide active and deferred members with information about the alternative benefits available to them under the remedy through the annual benefits statement. Other members will be provided with information to enable them to make a choice of benefits in a remediable service statement.

Who will be in scope for the proposed changes?

- 5.4 To be eligible for the retrospective pension remedy, a scheme member must have been in pensionable service under a relevant public service pension scheme both on or before 31 March 2012 and on or after 1 April 2015, without a disqualifying break in service. A disqualifying break in service is a gap of longer than five years in the remedy period. Individuals who were employed as firefighters on 31 March 2012 but were not active scheme members of the legacy firefighters' pension schemes, but who had an entitlement to be a member of the 2006 firefighters' pension scheme will also be eligible.
- 5.5 Since 1 April 2022, those who meet the above criteria are now eligible for the retrospective remedy. These members can be split into cohorts that may need different treatment:
 - I. active members
 - II. deferred members
 - III. pensioner members
 - IV. individuals entitled to dependant and/or death lump sum benefits in respect of deceased members with eligible remedy period service

5.6 These cohorts will also include members who joined a firefighters' pension scheme for the first time after 1 April 2012 but had previous pensionable service in another Public Service Pension Scheme on or before 31 March 2012.

5.7 It may also be possible for a member who had opted out of their firefighters' pension scheme because of the introduction of the 2015 reformed scheme to opt back into the scheme, subject to certain conditions. See the section on Contingent Decisions (paragraphs 5.76 onwards) for further detail.

Who will be out of scope for pension remedy?

5.8 The following members are out of scope for pension remedy:

- members who first joined pensionable public service on or after 1 April 2012
- members who have had a break in pensionable public service of more than five years

Legislation

5.9 The PSPJOA applies to all the main public service pension schemes and received Royal Assent in March 2022. It provides the necessary powers to make consequential changes to public service pension schemes by 1 October 2023. Chapter 1 of the PSPJOA provides the framework for the remedy, including provision to make changes to public service pension scheme rules. Amendments are required to those rules, including those of the firefighters' pension schemes, to implement the Government's remedy. The PSPJOA also provides for HM Treasury (HMT) to make Treasury Directions, which specify how certain powers under the PSPJOA are to be used by public service pension schemes when making their scheme regulations.

Remedy period and Remediable Service

5.10 The remedy period is the period during which the age discrimination occurred. It began with the implementation of the discriminatory rules on 1 April 2015 and ended when the differential treatment based on age came to an end on 31 March 2022, with the transfer of all remaining members in the legacy schemes to the reformed 2015 reformed pension scheme. The choice of scheme design (the core of the pension remedy) is only offered in relation to pensionable service which took place during the remedy period.

5.11 Pensionable service, for in-scope members, under a legacy or reformed scheme during the period 1 April 2015 – 31 March 2022 is referred to as 'remedy period service'. It is important to note that remedy period service includes service

as a member of a legacy scheme as well as service as a member of the 2015 reformed pension scheme during the remedy period.

Roll Back

5.12 Roll back is the term used to describe the process by which in-scope members are placed back into a relevant legacy pension scheme(s). Under the retrospective remedy, all in-scope members will roll back to the scheme to which they would have belonged had the 2015 reformed pension scheme not been introduced on 1 April 2015. It is possible that some members may have remedy period service in more than one legacy scheme as a result of the roll back.

Deferred Choice (DC)

5.13 DC applies to members not yet in receipt of benefits (to include deferred and active members). At retirement they will receive a choice ('make an election') of either the 2015 reformed pension scheme benefits, or legacy scheme benefit for any service accrued during the remedy period. The DC is set out in section 10 of the PSPJOA. All benefits accrued in the remedy period will be paid from the legacy scheme, regardless of the member choice, but will be calculated according to the scheme that has been chosen. Schemes are obliged to specify an election period during which the member must make this choice. This must not be earlier than one year before the date it is reasonably expected that, if a deferred choice election is made, new scheme benefits would become payable in relation to the member's remedy period service. The election is deemed to take effect immediately before the member becomes a pensioner. Where a member dies in service, the election is deemed to have taken effect immediately before the member's death.

5.14 If an active or deferred member does not communicate a choice as to which scheme benefits to receive by the end of the election period, schemes may use the powers in section 12 to determine which scheme benefits to pay.

5.15 A member will be able to request a DC forecast, setting out the pension benefits available to them under the alternative options, through a Remedial Service Statement (RSS) and an election package. The proposal in the draft regulations is that this will be possible between six and twelve months before their intended retirement. Once the scheme manager has provided the package, scheme regulations will provide powers that the member must choose to receive legacy scheme benefits or to receive 2015 reformed pension scheme benefits within twelve weeks of receipt. A DC will be able to be revoked up until the point of retirement benefits coming into payment.

5.16 Where a member dies (after section 2(1) takes effect) before making an election then the member representative makes an election on behalf of the member. The firefighters' pension scheme must determine who can make a DC election for a deceased member on or after 1 October 2023.

Immediate Choice (IC)

- 5.17 IC applies to pensioner members, or member representatives of a deceased member, who are already receiving benefits (Immediate detriment cases). They will be given a choice as soon as practicable after 1 October 2023. The PSPJOA requires this process to be completed within 12 months of the member receiving their remedial service statement or such later time that the Scheme Manager deems reasonable
- 5.18 The Home Office will be working with the fire sector to ensure that immediate choice cases are processed as soon as reasonably possible.

Changing a choice

- 5.19 Section 11(6) of the PSPJOA provides that no DC may be revoked once benefits have been put into payment. Section 7(1)(c) also provides that an immediate choice election is irrevocable. For the firefighters' pension schemes, the Home Office has taken the following approach in relation to revocation:
- Scheme regulation will provide powers for Active or Deferred members who make a DC by the standard deadline of six calendar months before benefits are due to come into payment, may revoke up until the benefits come into payment. If it is revoked a further choice can be made, as long as it is made before benefits come into payment
 - If a deferred/active member has made a deferred choice and then dies prior to those benefits coming into payment, their election will lapse. The eligible decision maker will then receive a new Remediable Service Statement (RSS) and will have three months to make an election

Default position where no election is made

- 5.20 In cases where a member fails to make an election, the default position is that legacy scheme benefits would be payable in respect of the remedy period. However, the Act does provide that pension schemes may include in their rules provision which allows the scheme manager to treat an election as having been made. Home Office has considered whether and how this power should be used in the context of the firefighters' pension schemes.
- 5.21 There are a wide range of benefits offered by the various firefighters' pension schemes, and it is difficult to assess the value which individuals might place on them. In particular, the non-financial benefits (for example, whether benefits are payable to cohabitants and children born after service, pension age and differing ill-health pension provision). The Home Office's approach is that it will be made clear to members that the default option is legacy benefits and so, in most cases, it will not treat a failure to make an election as a choice for reformed benefits. To do so would, in effect, substitute the scheme manager's assessment of which scheme

would be more beneficial for the circumstances of the member, and this is not considered appropriate.

- 5.22 Exceptionally, there may be some cases where the scheme manager uses their discretion to make the choice on behalf of the member. In all cases, if no communication from a member as to whether or not a member wished to make an election is received by the scheme administrator, an investigation will always be carried out to determine all the circumstances prior to any decision being made.

Policy intent

Interest

- 5.23 The firefighters' pension scheme regulations need to ensure that interest payments are calculated and paid on relevant amounts in accordance with the PSPJOA and Treasury Directions.
- 5.24 There are a number of specific circumstances in which interest may arise. For example, differences in member contributions and tax relief payable (including missed member contributions), voluntary member contributions, and differences in lump sum paid to members whose benefits are in payment prior to the DC being introduced.
- 5.25 In line with Treasury Directions the 'no netting off' approach for applying interest. Where a payment of interest needs to be made, the scheme manager will individually apply interest to any debit and credit, and these figures will be added together to reach the final interest liability. The approach ensures that members who have been paid the incorrect amounts on any of their pension, including pension contributions or in instances where they have been overpaid pension benefits, are not placed in an advantageous or disadvantageous position as a result of the retrospective phase of the remedy.
- 5.26 A 'netting off' approach, where payments in different directions could offset each other before applying interest, was considered but ultimately rejected. This is because a 'netting off' approach before applying interest may result in less favourable monetary amounts for a member, which would go against the general principle of setting interest payments in the retrospective remedy context.

How will this work for immediate choice?

- 5.27 The regulations make provision for a pensioner member (or the member representative making a choice on behalf of a deceased member) to choose to receive the alternative benefits in respect of their remedy period service.
- 5.28 Member contributions due will be based on the immediate choice (or, if the member is deceased, the choice made by the member representative on behalf of the member) at rectification, with interest applied to over-payments and under-payments separately and only the final results are netted off.

How will this work for deferred choice?

- 5.29 If a member chooses 2015 reformed pension scheme benefits at retirement through the DCU, the difference in contributions between those paid and those due will be corrected, with interest applied to the calculated amounts owing or due individually, in line with Treasury Directions on interest.
- 5.30 There may be a subsequent correction for some members at retirement. Please see the section of this document on contributions (paragraphs 3.51-3.65) for further information on this.
- 5.31 Where members have over-paid contributions and have chosen not to take the compensation² upon implementation of the retrospective remedy, they may be due compensation if at retirement they choose the scheme with the lower contributions.
- 5.32 Whether a member is due compensation or must pay more contributions upon implementation of the retrospective remedy (or at a later date), the interest will be calculated based on the difference between net contributions after tax that should have been due and those that were paid.

Annual Benefit Statements (ABS)/Remediable Service Statements (RSS)

- 5.33 The PSPJOA requires that schemes issue members with an RSS: section 29 of the PSPJOA and Direction 20 of Treasury Directions set out what must be included in such statements. This legislation also covers who is entitled to an RSS, the time frame within which the first RSS may be sent following the implementation of the remedy and the frequency with which different categories of member receive them after that point.
- 5.34 The purpose of an RSS is:
- to provide a member with the information they require to make a choice between legacy and reformed scheme benefits
 - to start the process for making various choices for IC members
 - to provide an opted-out member with information they require to decide whether to opt back into the scheme
- 5.35 Scheme managers must ensure that eligible retired, active and deferred members or member representatives are issued with information about their pension benefits that includes remedy period service. This will either be through

² This is usually if they expect to take 2015 reformed scheme benefits for their remedy period service when they make a deferred choice election

the pre-existing ABS process (active and deferred members) or via a dedicated RSS (for example, where a member has retired).

- 5.36 An ABS provides members with an overview of their current pension accrual. An RSS will do much the same but is provided for by the remedy regulations. This type of statement has to include the alternatives for pension accrual during the remedy period under both reformed and legacy schemes.

How will this work for deferred choice?

- 5.37 The current business as usual procedure for issuing ABS will continue to apply for active and deferred members. Existing legislation allows for an annual exercise to be completed to issue the ABS either by electronic method or post. Existing legislation also allows for deferred members to request a paper statement once a year.

- 5.38 The firefighters' pension scheme proposes to follow the current procedure for issuing an ABS as it would be beneficial to retain the current process to help minimise any changes and reduce the costs, but the statement will include an overview of the two options available under the DC (legacy and the reformed schemes). Active and deferred members will also be able to request an RSS in the run-up to retirement if they so wish.

How will this work for immediate choice?

- 5.39 Under the RSS, all eligible members or member representative of eligible deceased members with IC will have to be given a calculation of the alternative scheme benefits. For pensioner members with remedy period service (including where the member has subsequently died), scheme managers will be required to calculate alternative scheme design benefits.

- 5.40 This will need to include information about when a benefit would become payable. If there are any calculations that rely on factors (such as those relating to commutation or late/early retirement) these should use the appropriate factors that were in place at the time of the member's original retirement date. The overarching approach could lead to an increase, a decrease or no change in the benefits already received, and that could then lead to implications for a member's tax liabilities.

- 5.41 The Home Office proposes that administrators provide members RSSs within eighteen months of 1 October 2023.

Transfers

- 5.42 As a consequence of all remedy period service being rolled back into the legacy scheme, any transfers that were transferred into the reformed scheme during the remedy period scheme regulations must have provisions to be able to deal with them at the point the member makes a choice.

5.43 The PSPJOA provides powers under section 21 which determine what happens to transferred-in service. These allow transfers-in to move into the legacy scheme (and equivalent benefits provided) but does not require it.

5.44 Section 21 provides powers to alter any transfer-in made in relation to remedy period service in another public service scheme or any transfer made between the closing date and 31 March 2022. The powers include varying a transfer-in to provide equivalent rights under an alternative eligible scheme or extinguishing the transferred in rights and providing equivalent or alternative rights under an eligible scheme or varying the rights dependent on any election under section 6 or section 10. As a standard approach at the point a choice is made, the following will apply:

- if a member chooses 2015 reformed pension scheme benefits for the remedy period, then the current rules continue to apply, and no changes to the transfer will be required
- if a member chooses legacy scheme benefits for the remedy period:
 - the transfer buys equivalent service in the legacy scheme (where the transfer is allowed)
 - if that is not allowed or possible, the transfer becomes associated with any service post 1 April 2022 based on an actuarial calculation, where applicable
 - if the current rules at the time would not allow all the transfer or loses part of the transfer value due to breaching the pensionable service cap in the legacy scheme and has no 2015 reformed pension scheme service, a member will be paid equivalent value in the legacy scheme benefits as an adjustment of contributions accordingly based on an actuarial calculation

Additional Pension (AP)

5.45 Across the reformed public service pension schemes there are a range of voluntary additional benefits to members. As the service in the remedy period must be put back in the legacy scheme, any voluntary contributions for such additional benefits must be addressed in implementing the remedy. In the 2015 firefighters reformed pension scheme, Additional Pension (AP) is the only available voluntary additional benefit. It can be purchased either by one-off lump sum payments or by making periodic payments of a particular amount. AP is not available in the firefighters' legacy schemes. We have considered various ways of converting to alternative benefits in the legacy scheme, but all the options either have restrictions on them that mean they cannot be guaranteed to apply in all cases or lead to a difference in treatment between cohorts of members.

5.46 Our proposal, therefore, is that all eligible firefighters' pension scheme members and member representatives with AP and remedy period service will be

given a 'refund' or 'return of contributions'. This will be achieved in the form of compensation equivalent to the contributions paid less the amount representing the tax relief from which the member benefitted plus any interest due. The original election by the member to purchase added pension will effectively be made null and void.

5.47 In this proposal a member would not be required to apply for compensation. However, it may be helpful to a member in managing their situation at roll back if they can make decisions about the timing of compensation payments as many will have contribution adjustments that they may prefer to offset the compensation against.

Contributions

5.48 Employee contributions paid by a scheme member may need to be adjusted where:

- there is a difference in contributions rates between the legacy schemes and 2015 reformed pension scheme, whether for members in general or for certain categories of member
- a scheme member had tapered transitional protection, and they paid both legacy scheme and 2015 reformed pension scheme contributions during their remedy period service (because taper-protected members are not allowed to retain a mix of legacy scheme and 2015 reformed pension scheme benefits for the remedy period)

5.49 The current contribution rates for the legacy 1992 firefighters' pension scheme are higher than those in the 2015 reformed pension scheme. This means that members who are returned at roll back to the 1992 firefighters' pension scheme for their remedy period service will immediately owe the difference in contributions.

5.50 Conversely, the current contribution rates for the 2006 firefighters' pension scheme are lower than those in the 2015 reformed pension scheme. This means that members who are returned to the 2006 firefighters' pension scheme for their remedy period service will immediately be owed the difference in contributions paid as compensation.

5.51 This means that virtually all eligible members will have a contributions adjustment. This is set out in more detail in the paragraphs that follow.

How will this work for deferred choice?

5.52 Once eligible members have been returned to their relevant legacy firefighters' pension scheme for their remedy period service members will have a contributions adjustment record.

- 5.53 Members can have any compensation due to them at the point of roll back or they can keep the adjustment on record, but this must be paid to a member or a member representative at the point of benefit crystallisation.
- 5.54 Members can pay any monies owed at the point of roll back or they can keep the adjustment on record, but this must be paid by a member or a member representative at the point of benefit crystallisation and deducted from the pension benefits.
- 5.55 The calculations of contribution adjustments will take into account any tax/tax relief and the appropriate interest (in line with section 26 of the PSPJOA and Treasury Directions).
- 5.56 There may need to be a final contributions adjustment, particularly where a member dies before retirement and a DC is then made (for example, by their personal representative). When a DC is made in respect of a deceased member, this will be treated as taking effect immediately before the member's death.
- 5.57 Where a member who has received compensation subsequently makes a deferred choice election for 2015 reformed pension scheme benefits and, as a result, owes member contributions to the scheme, that amount will be paid by lump sum at the point of benefit crystallisation and deducted from the pension benefits.

How will this work for immediate choice?

- 5.58 This applies to pensioner (and deceased) members:
- who were unprotected members and wish to receive legacy benefits, having been in the 2015 reformed pension scheme
 - who were fully protected members and wish to receive 2015 reformed pension scheme style benefits
 - who received “tapered” protection and moved to the 2015 reformed pension scheme after 1 April 2015 but during the remedy period – these members must decide whether to receive legacy scheme or 2015 reformed pension scheme style benefits for the entirety of the remedy period
- 5.59 Where members have overpaid contributions, the Home Office proposes to compensate the member for the difference between what has been paid and what (retrospectively) is owed. Members who have underpaid contributions will be required to pay any shortfall in member contributions to the scheme, and this will be deducted from their pension benefits.

- 5.60 Where contributions need to be adjusted, the Home Office proposes that there will be a single correction (compensation payment or recovery payment) in respect of pensioner/deceased members. This will occur after the pensioner member, or the person making the decision on behalf of the deceased member, has either made an immediate choice election to receive benefits modelled on the 2015 reformed pension scheme or, where no election is made, after the time limit for making an immediate choice election has passed.
- 5.61 The PSPJOA does not allow a mix of legacy and reformed scheme benefits for remedy period service. If an eligible member is already in receipt of mixed service benefits, there is a provision that maintains the monetary value of the benefits within certain parameters.
- 5.62 The calculation of contribution adjustments will take into account any tax/tax relief that cannot be dealt with otherwise and the appropriate interest (in line with section 26 of the PSPJOA and Treasury Directions).

Tax relief on contributions

- 5.63 At the point of paying pension contributions, members are entitled to receive tax relief on their pension contributions. This tax relief is only available to individuals who are active scheme members at the point that contributions are paid and is based on the individual's marginal rate of income tax at the time when the pension contributions are paid. Former members will have to have the tax relief included in the calculation – the outstanding contributions will always be offset against benefits due to be paid under the scheme.

III Health Retirement

- 5.64 The firefighters' pension schemes pay out a range of ill-health retirement (IHR) benefits to members who are unable to continue working as a firefighter due to being permanently disabled/permanently medically unfit.
- 5.65 To qualify for a lower-tier ill-health pension a firefighter must be permanently incapable of performing the ordinary duties of their role. To qualify for an additional higher-tier ill-health pension (in addition to a lower-tier ill-health pension) a member must also be incapable of undertaking any other regular employment averaging 30 hours a week over a minimum period of 12 months.
- 5.66 Any legacy scheme members who have transitioned into the 2015 reformed pension scheme before being ill-health retired would have been dealt with under the 'single source' ill-health pension arrangement. The 'single source' ill-health arrangements provide that a member who has transitioned into the 2015 reformed pension scheme from the legacy 1992 and 2006 schemes becomes entitled to an ill-health pension that is all payable out of the 2015 reformed pension scheme until the member attains their legacy scheme's normal pension age.

5.67 This is made up of a pension in respect of the member's legacy scheme service (this meaning a member receives an equivalent to the legacy scheme, but without any ill-health enhancement for 2015 reformed pension scheme or future service), and the ill-health pension paid from the 2015 reformed pension scheme. The full pension payment is then paid under the 2015 reformed pension scheme regulations. The higher-tier calculation in the member's legacy scheme is turned off (where it applies), and any entitlement to a higher tier pension is calculated entirely in accordance with the 2015 reformed pension scheme regulations.

How will this work for immediate choice?

5.68 Re-assessment is only needed for IC IHR cases. This means a retrospective ill-health assessment will only be needed for cases where a member (who has remedy period service) has been ill-health retired or dismissed on capability grounds during the remedy period, be that from the legacy scheme or the 2015 reformed pension scheme depending on their circumstances. In some cases, it may be a better choice for the member to have the pension for the remedy period paid under the terms of the alternative scheme, subject to satisfying the ill-health qualifying criteria for that scheme. Where this is the case and the member makes this choice, the member will still technically stay/be put back into their legacy scheme for the remedy period, but the pension will be calculated in accordance with their IC.

Abatement

5.69 Abatement, following the implementation of the remedy will more immediately affect those who have already retired.

5.70 Section 6(4)(a) PSPJOA provides for no changes to 2015 reformed scheme benefits unless no election has been made by the end of the election period. If a member is in receipt of 2015 reformed scheme benefits and makes an election, no adjustment to abatement will occur. It's only if a member chooses legacy scheme benefits or the default applies that they would see a change.

5.71 Abatement applies in the legacy firefighters' pension schemes. It does not apply to the 2015 reformed firefighters' pension scheme. It is a process which occurs where an employing fire and rescue authority exercises their discretion to reduce or stop paying a pension when a retired member returns to work in any capacity with any fire and rescue authority.

5.72 Where an individual who retired and has been re-employed during the remedy period is moved back to their legacy scheme for the remedy period, abatement may then apply.

How will this work for immediate choice?

- 5.73 Where a fire and rescue authority exercised their discretion not to apply abatement, they will need to retrospectively recalculate the amount that they are required to pay into their local pension fund account³.
- 5.74 In all other cases where abatement was applied, the fire and rescue authority will need to retrospectively revisit (back to retirement) the amount of pension that should be abated. Any overpayments of pension will need to be recovered and any underpayments will need to be repaid. Both underpayments and overpayments will have interest applied.
- 5.75 When presented with their choice, the member will need to consider how their decision will impact each aspect of the abatement calculation. Remediable Service Statements (RSS) will detail how abatement rules would apply under both schemes.

Contingent decisions

- 5.76 A contingent decision is a decision taken by a member, relating to their membership of the fire pension scheme, that would have been different had it not been for the discrimination identified by the courts. This is time limited by a year from the issue of the RSS or, if later, within such later time as the scheme manager considers reasonable in all the circumstances.
- 5.77 For all contingent decisions a key principle is that the member needs to make a claim to the scheme. The fire pension schemes may use a template form or a bespoke form for scheme members to complete. It is the responsibility of each scheme to consider what needs to be done to alert members to the claim process. The members must confirm the decision that was made and what they would have done differently had they been able to remain in their legacy scheme or join the 2015 reformed scheme earlier.
- 5.78 Evidence to support the claim should be submitted with the claim form if available. The member may also, or instead, highlight information provided in the years before or during the remedy period about the member's intentions regarding, for example, their continued membership and retirement intentions, including at the time of an original request to leave or not to join the scheme, which is held by the scheme administrator or employer. For example, an opt-out form that asks for a reason for opting-out might serve as evidence.
- 5.79 On receipt, the scheme manager considers whether the member qualifies for the contingent decision process, for example, for opt-out cases would they be in-scope for remedy if the contingent decision was reversed.

³ This is to be done under Rule LA2(9) of the 1992 Scheme, and Part 13, Rule 2(11) of the 2006 Firefighters' Pension Scheme.

5.80 There are three categories of contingent decisions in the fire pension scheme:

- I. Opt-out: A member would not have opted-out if they had been allowed to remain in the legacy scheme beyond their transition date or if protected members had been allowed to join the reformed scheme from 1 April 2015
- II. Transfers: Members chose to transfer (in or out) and now wish to revisit the decision, or they chose not to transfer and now wish to do so
- III. Additional Service: Members argue they would have purchased (more) additional service if they were in the alternative (legacy) scheme

Opt-outs

5.81 Members who made an election to opt out directly relating to the pension reforms prior to their transition date will be able to elect to pay the missing contributions for the opted-out period of remedy period service.

5.82 Section 5 of the PSPJOA allows remedy period service to be reinstated but does not provide the power to reinstate any service pre or post the remedy period. Where a member can demonstrate to the scheme that they had a compelling and reasonable case to do this, schemes will need to use provisions in the existing scheme rules to opt in in respect of any pre or post remedy period service.

5.83 For post-remedy period service, as all members could have been part of the 2015 reformed pension scheme since 1 April 2022, there would be nothing preventing a member opting back in for post 1 April 2022 service. Members do not need to wait for the retrospective remedy to do this.

5.84 The timings of opt-out can demonstrate to scheme managers the opt-out is directly related to the pension reforms. For members who made a choice to opt out within six full pay periods immediately prior to the transition on 1 April 2015 to the 2015 reformed scheme and at any time during the remedy period scheme managers can be satisfied that members may have made a different decision in relation to the remedy period service were it not for the discrimination. These members should now be given the option to pay missing contributions for all of the opted-out remedy period service.

5.85 In other cases when the opt-out is outside of the remedy period and three months prior, there needs to be contemporaneous evidence that states the reason for opting-out relates to the reforms. Examples are:

- the member had explicitly made clear (for example, in correspondence) that they did not believe the 2015 reformed pension scheme was worth the

contributions they would have had to pay for membership, for example, because of the higher pension ages and implications for pensions taken before NPA

- a complaint letter confirming opt-out will follow if reform is implemented and opt-out request is received within reasonable timescale
- if a member was a litigant in an 'injury to feelings' claim

Additional service

5.86 The firefighters' legacy schemes allowed members to buy additional service (as sixtieths of average pensionable pay). Remedy-eligible members who would have been able to buy additional service in their legacy scheme during the remedy period will be able to elect to buy additional service under the terms that would have been available at the time.

5.87 Any contributions that should have been made will have to be paid with interest added.

5.88 The closure of the legacy schemes by 1 April 2022 will not qualify members under the additional service rules. A member's circumstances must mean that they would have qualified, had they been in the legacy scheme at the time without anticipating the closure of the scheme by 1 April 2022.

5.89 The additional service contract will apply from the next birthday in the remedy period which falls after the member's transition date, unless the member has evidence for a different date, such as taking out an additional pension contract in the 2015 reformed pension scheme in the remedy period. In such a case it will apply from the nearest birthday in the remedy period to that date.

Transfers (contingent decisions)

5.90 This is where members chose to transfer (in or out) during the remedy period and now wish to revisit the decision, or they chose not to transfer into the 2015 reformed pension scheme but would have transferred had they been in their legacy scheme.

5.91 *Transfers in and out:* Members who have not transferred and who could have done under the legacy scheme rules and now wish to reverse it will need to be given a window to transfer in/reverse it.

5.92 Any reversing will depend on the sending/receiving scheme agreeing to reverse the transfer. There will need to be contemporaneous evidence that states the reason for any reversal relates to the reforms.

Divorce

5.93 Pension rights can be a valuable asset and, consequently, the value of any pension rights must be considered as part of a divorce settlement or on the dissolution of a civil partnership. Once pension assets have been identified and valued, a couple must agree how to use this value in any financial settlement.

5.94 There are 3 options for using the value of those pension rights in any financial settlement:

- Offsetting the value of the pension benefits against other matrimonial assets
- A pension sharing order (PSO)
- An earmarking order (EO) in Scotland or a pension attachment order (PAO), formerly known as an EO, in England and Wales

5.95 The PSPJOA does not make any specific provision in relation to pension offsetting or pension attachment orders.

5.96 PSOs rely on the member providing a Cash Equivalent Transfer Value (CETV) that can be taken into account when deciding how assets should be split. The CETV is very likely to be different under the legacy and 2015 reformed pension schemes, so there needs to be a recalculation for PSOs that have been applied in respect of firefighters' pension scheme members since 1 April 2015 up to implementation of the remedy, and there is a continued need for remedy to factor into the calculations for PSOs that occur after 1 October 2023.

5.97 Where there is a pension in payment and the member opts for a lower pension, meaning that in principle there would have been overpayments to the member and/ or ex-spouse, there will be no liability for overpayments from the ex-spouse which arise as a result of the member's choice of benefits.

How will this work for cases that arose before implementation?

5.98 Where a pension is already in payment, or where a member is still active or deferred, it is possible that the CETV which was used to determine the value of the member's pension and how it should be offset against other assets should have been lower or higher, in line with the member's choice of benefits. If it is higher than the CETV originally calculated, a portion of the additional amount in the same proportion as specified in the PSO will be converted to an additional pension credit and awarded to the pension credit member.

How will this work for cases that arise after remedy implementation?

- 5.99 Where a case arises after implementation, the CETV will reflect the greater value available to the member. The member's pension could still change depending on their choice at retirement, but their ex-spouse will be unaffected.
- 5.100 Where a divorce takes place after the member has already retired and decided on the benefits, they wish to receive in respect of their remedy period service, the CETV will reflect the choice the member has made.

Bereavement and Child Pensions

- 5.101 Sadly, some eligible members may have died before they have made a choice in respect of their remedy period service.
- 5.102 If the eligible deceased member had not made a choice, then relevant scheme regulations may include a provision about who may make a choice in relation to remedy period service for an eligible deceased member. The member representative will make a choice of either legacy scheme benefit accrual, or 2015 reformed pension scheme benefit accrual for the deceased member's remedy period service. This applies both in cases where benefits were already in payment before 1 October 2023 and to cases where a member died in service or while deferred on or after 1 October 2023.
- 5.103 The member representative will complete a specific choice confirming their decision as to whether to accept legacy scheme or 2015 reformed pension scheme benefit accrual for the deceased member's remedy period service, for the survivors' benefits.
- 5.104 Where a pensioner member dies after their choice and their benefits have crystallised (typically where the member's pension is put into payment), the member representative is not entitled to make a second choice or to revoke a choice already made by the deceased eligible member.
- 5.105 The member representative will be (depending on the circumstances of the specific case) in the following order:
- I. an adult survivor (that is, a surviving spouse/civil partner/life partner)
 - II. personal representatives (that is, an executor)
 - III. a parent/guardian of surviving children
 - IV. an adult surviving 'child'

- V. a person agreed upon by parents/guardians and/or adult surviving “children” and (if applicable) parents/guardians to be the member representative
- VI. a scheme manager

5.106 If the member representative is not the legal parent or guardian of the relevant children, or not the person agreed upon by the legal parent or guardian, their decision might result in reducing the children’s pensions in payment. The regulations will ensure that, in such cases, any child pension that is already in payment is not reduced as a result of the member representative’s decision. This is based on the powers in section 22 of the PSPJOA.

How will this work for deferred choice?

5.107 Active and deferred eligible members will be able to choose between legacy or equivalent new scheme benefit accrual for their remedy period service at the point they make an application to receive retirement benefits. If they die before the pension crystallises, a member representative will make the DC. There is a deadline before which the eligible member or member representative must make a DC, and a default action if an election is not made within a set deadline

How will this work for immediate choice?

5.108 The survivor of someone who was eligible to make an immediate choice (but had not yet made it) will be able to make a choice. Once a choice has been made by the member and implemented, the survivor has no further choice.

Overpayments and Underpayments – Pensions in Payment

5.109 Where a pension is in payment before an election is made, and the member makes a choice which results in a change to benefits payable, the change to the pension benefits is backdated to the point when pension benefits initially became payable. A process of reconciliation will be necessary to ensure that the member has received the correct amount of pension over time, and this may result in one of the following situations:

- underpayments, resulting in payments from the scheme to the member (for example, additional pension or lump sum)
- overpayments that have been made by the scheme to the member and which have to be repaid

5.110 Interest will be both payable on arrears owed to members and charged in relation to overpayments. A detailed explanation of interest policy can be found in the Treasury Directions.

5.111 Section 14 of the PSPJOA provides that overpayments must be repaid to the scheme. However, the PSPJOA also provides that schemes may decide whether to waive all or part of any such liabilities owed to the scheme. Treasury Directions set out factors to be considered by the scheme when considering whether to waive or reduce any such liability by the member and that the principles set out in Managing Public Money should be followed.

5.112 Accordingly, the scheme manager must have regard to the circumstances of the member and (if different) the person by whom the amounts are to be paid. The scheme administrator (or manager) can choose to reduce or waive the liability. In addition, the scheme manager must consider if it is appropriate to allow the member to pay the liabilities in instalments. In reaching a decision, the following will be considered:

- Whether the liability has arisen as a result of an immediate choice or a deferred choice election
- Whether the member is deceased
- Whether, in the reasonable opinion of the scheme manager, payment of the liability in full or in part would result in unreasonable hardship; and
- Whether, in the reasonable opinion of the scheme manager, there are any other exceptional circumstances which mean the liability should not be paid in full or in part

6. Public Sector Equality Duty (PSED)

6.1 The Public Sector Equality Duty (PSED) is set out in section 149 of the Equality Act 2010 and requires public authorities, in the exercise of their functions, to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the 2010 Act
- advance equality of opportunity between people who share a protected characteristic and those who do not, and
- foster good relations between people who share a protected characteristic and those who do not

6.2 This involves having due regard to the need to:

- I. remove or minimise disadvantages suffered by people due to their protected characteristics, and
- II. take steps to meet the needs of people from protected groups where these are different from the needs of other people

6.3 The equality duty covers the nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (gender) and sexual orientation.

6.4 [HM Treasury has conducted an equality impact assessment](#), which considers the impact of the overarching policy, powers and requirements associated with the PSPJOA. As set out in that assessment, in particular paragraph 1.8, that assessment “does not cover secondary legislation made using powers in this Bill. Separate analysis to consider the impact of changes to scheme regulations (beyond those covered and/or directed by the measures in the Bill) will be produced when the powers to do so are exercised”.

6.5 Stakeholder engagement and informal consultation have supported the Home Office to identifying any potential risk of adverse impacts in relation to the protected characteristics. Such stakeholder engagement includes engagement with fire sector employer and employee representatives, other government departments and devolved administrations. Through firefighter’s’ pension scheme membership, all members in scope for the remedy will have equal access to the remedy, irrespective of any protected characteristic that may apply to them. The Home Office will produce an Equality Impact Assessment that will be published alongside the response to this consultation. The PSED is an ongoing duty, and we

will continue to consider this duty until the final regulations enacting the retrospective remedy are made.

7. Consultation questions

We request that you do not provide any personally identifiable information (for example, names, dates, and locations) in your answers to the following questions.

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?

Yes	No

If no, please explain why.

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?

Yes	No

If no, please explain why.

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?

Yes	No

If yes, please explain why.

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?

Yes	No

If no, please explain why.

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?

Yes	No

If no, please explain why.

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?

Yes	No

If no, please explain why.

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?

Yes	No

If no, please explain why.

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?

Yes	No

If yes, please explain why.

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?

Yes	No

If yes, please explain why.

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?

Yes	No

If yes, please explain why.

Thank you for responding to this consultation.

8. Conclusion and next steps

- 8.1 The purpose of the retrospective remedy is to remove past age discrimination for the remedy period and place all firefighters' pension scheme members in the position they would have been in before the discrimination occurred. However, firefighters' pension scheme members may consider the reformed benefits are more suited to their circumstances and the retrospective remedy allows them to choose which scheme design should apply to them for the remedy period. Information will be provided to each member to allow them to make an election within a specified timeframe.
- 8.2 The retrospective remedy marks the final phase of removing the discrimination arising as a result of protections provided under the reformed schemes for older firefighters' pension scheme members when introduced in 2015. This consultation explains the policies that are required to implement the remedy and seek comment on specific aspects of those policies. The legislation required to amend the rules of the firefighters' pension schemes will be made in September 2023 and come into force on 1 October 2023.
- 8.3 Firefighters' pension scheme members who have already retired and/or received a pension award will be asked to make their choice as soon as practicable after the changes are implemented. The position they choose would be applied retrospectively back to the date the award was made.

9. About you

Please use this section to tell us about yourself. Please note you are completing this section **voluntarily**. Please be aware that by responding electronically we will have your email address.

Representation in which you are responding to this consultation exercise (for example, individual member or employer, employer or member representative)	
If you are a representative of a group or force, please tell us the name of the group (for example FBU or LGA)	
Please also indicate if you agree for your response to be made public and associated with the group or if you would like to remain anonymous.	
Date	

Information and Data Handling

The Home Office will process personal data in accordance with the applicable data protection legislation. More information on what data we are collecting, why and how it will be looked after can be found here:

<https://www.gov.uk/government/consultations/firefighters-pension-scheme-retrospective-remedy>

The published consultation response may include extracts from any submission made by an individual or organisation. Comments made by individuals will normally be non-attributable, but respondents should be aware that information provided during the course of this consultation may be released, on request, in accordance with the provisions of the Freedom of Information Act 2000. Personal data will likely be exempt. Comments submitted by an organisation are likely to be attributed to that organisation.

How long will we retain your data?

Data protection law requires that personal data shall be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are collected. The Home Office will retain a record of the statistical analysis of returns, including the number of respondents, but personal information,

including names, will not be retained after the Home Office Pension Scheme (Amendment) Regulations 2023 are published.

9. Contact details and how to respond

Please respond by 23 May 2023 using the online survey at:

<https://www.homeofficesurveys.homeoffice.gov.uk/s/LPA2YB/>

If you cannot access or use the online survey, you can send your response to:

Email: Firepensionspublicservicepensionsremedy@homeoffice.gov.uk

If you are a user of specialist accessibility software that is not compatible with the above options, you may post your response to:

Fire Retrospective Remedy Consultation
Police Workforce and Professionalism Unit
Home Office
6th Floor, Fry Building
2 Marsham Street
London SW1P 4DF

If you are unable to access an electronic version of the document, please write to the above address and a paper copy will be provided.

Complaints or comments

If you have any complaints or comments about the consultation process, you should contact the Home Office at the above address.

Extra copies

Further paper copies of this consultation can be obtained from the above address, and it is also available online <https://www.gov.uk/government/consultations/firefighters-pension-scheme-retrospective-remedy>.

Alternative format versions of this publication can be requested from:

Email: Firepensionspublicservicepensionsremedy@homeoffice.gov.uk

Publication of response

The Home Office will endeavour to provide a response to this consultation by summer 2023. The response paper will be available online on gov.uk.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Home Office.

The Home Office will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

10. Consultation principles

This consultation is being conducted in line with the [Cabinet Office consultation principles](#) published in January 2016. These principles give clear guidance to Government departments on conducting consultations.

Annex A: Further Policy and Associated Factors

Taxation

As a result of the remedy, members may face changes to their individual tax situation. The remedy may impact a member's Annual Allowance (AA), Lifetime Allowance (LTA) and any benefits in payment. For most members no tax adjustment will be required. However, a minority of members may see changes to their individual tax situation. Some elements of taxation policy remain under development, and guidance will be provided by HMRC.

Compensation

The Act provides that compensation may be paid by the scheme where a member (or their personal representatives) has incurred compensatable losses. The power to pay such compensation can only be exercised in accordance with Treasury Directions and in respect of categories of loss defined in the Treasury Directions. The relevant Treasury Directions came into force on 19 December 2022 and deal with compensation in Chapter 3 of Part 2.

The Treasury Directions set out the factors to which the scheme must give regard when considering whether compensation may be appropriate. Any compensation payable is not designed to give members a financial advantage but to return them to the position they would have been in had the discrimination not occurred. They also define the type of losses for which compensation may be appropriate.

Generally, under the Treasury Directions compensation may be payable in relation to tax losses or for direct financial losses. Payments may be in the form of direct compensation payments to members, or indirect compensation, where the member receives additional benefits.

The Home Office intends to offer indirect compensation in line with the provisions set out in Treasury Directions. Situations where indirect compensation may be payable would include where a member has used scheme pays to pay an Annual Allowance Tax Charge (AATC) or a Lifetime Allowance Tax Charge (LTAC) and the effect of roll back and/or their remedy election means they have made an overpayment.

Annex B: Glossary of terms used in the consultation document

Term	Meaning
Abatement	If you re-join employment with any fire and rescue authority in any capacity after retirement and have a legacy pension in payment, the pension in payment may be withdrawn in full or in part depending on your new salary. The 2015 reformed firefighters' pension scheme is not subject to abatement.
Accrual	The rate at which pension benefits accrue for each scheme year. Each scheme is different in design and accrual rate.
Active Member	A member of the firefighters' pension scheme who is currently serving as a firefighter and accruing benefits under the scheme.
Additional Pension	2015 reformed firefighters' pension scheme only - an amount of extra annual pension that you can buy to increase either your retirement benefits and/or your dependants' benefits.
Additional Service	A way of increasing the benefits you receive (that is, final pension and lump sum) by purchasing extra reckonable service (legacy schemes only).
Annual Allowance (AA)	The AA is how much can be saved towards a pension each tax year without a tax charge applying. For Firefighters' Pension Schemes this is determined by the capitalised value of the increase in the accrued benefits over the tax year (that is, the growth of the pension in the tax year). The standard annual allowance since 6 April 2016 has been £40,000.
Beneficiary	A person who has become entitled to receive any death benefit.
Career Average Revalued Earnings (CARE)	A CARE scheme delivers a defined benefit pension based on a member's salary in each year of employment, not just their final one. Each year's pension accrual is revalued in line with an index.
Cash Equivalent Transfer Value (CETV)	A CETV is the expected cost of providing member's benefits within a scheme. It is used in pension sharing and pension transfers.
Club transfer	The Public Sector Transfer Club, also known as the Club, allows easier movement of employees and their pensions from one employer to another. Club members operate mainly within the public sector and rules are governed by the Cabinet Office.
Commutation	When a member gives up part of the pension income in return for a lump sum at retirement.

Compound Interest	Compound interest is calculated on the principal amount and the accumulated interest over the period.
Contingent decision	A decision related to the pension scheme(s) that a member took or did not take as a result of the (actual or perceived) implications of the introduction of the reformed schemes.
Deferred Choice	The choice (or election) made by active or deferred members at the point when pension benefits, including Early Departure Payments, are due to come into payment. Covered under section 10 of the Act.
Deferred Choice Underpin (DCU)	The provision for members to remain in, or be returned to, the legacy schemes for service between 1 April 2015 and 31 March 2022. At the point of retirement (or when benefits become payable) or as soon as practicable (for members who have already had a pension award), members would then be able to choose to instead receive reformed scheme benefits for that period.
Deferred Member	A member of a firefighters' pension scheme who has left employment as a firefighter or has opted to leave the membership of the pension scheme and has a deferred pension not yet in payment.
Deferred Pension	If a member leaves employment or opts out of the scheme's membership before the retirement age for that scheme, they will become a deferred member and are entitled to a deferred pension when they reach the relevant Pension Benefit Age for the scheme to which they belong.
Dependant	Collective term to describe a member's spouse, civil partner, eligible partner or eligible child.
Election	Collective term used to cover immediate and deferred choice.
Election Period	The period of time within which a member must make a remedy election.
Eligible Child	A child, as defined in the relevant scheme rules, who is eligible for a child pension under the scheme rules.
Eligible Partner	An unmarried partner of the member, who meets certain conditions set out in scheme rules and is therefore entitled to a pension on the same terms as a spouse or civil partner.
Firefighters' Pension Scheme 1992	The Pension Scheme for Firefighters' , introduced in 1973 and closed to new entrants on 6 April 2006.
Firefighters' Pension Scheme 2006	The Pension Scheme for Firefighters, introduced in 2006 and closed to new entrants on 31 March 2015.
Firefighters' Pension Scheme 2015	The Pension Scheme for Firefighters who join the force from 1 April 2015, and those members who were already in employment on that date and did not qualify for (unlawful) transitional protection. Since 1 April 2022 it is the only pension scheme available to Firefighters.
Ill Health Benefits	If you are medically unfit to continue in your role due to ill-health or injury, then you may be entitled to ill-health

	pension benefits. The type of benefits you will receive are dependent upon your individual circumstances, the scheme(s) you belong to and the degree of disability.
Immediate Choice	Under section 6 of the Act members who already have benefits in payment or who have died by the time the remedy is implemented (as entitlement to the payment of benefits in relation to remediable service will have occurred) will be provided with an immediate choice.
In-scope Member / Eligible Member	The remedy applies to pension scheme members who were in pensionable public service both on or before 31 March 2012 and on or after 1 April 2015, including those with a gap in service of no longer than five years. The detailed eligibility conditions are set out in section 1 of the Act.
Internal Dispute Resolution Procedures (IDRP)	An internal dispute process required by the Pensions Act 1995. Under the IDRP process disputes can be considered independently by the Pension Ombudsman if they cannot be resolved internally.
Member	An individual who joined the firefighters' pension scheme and is accruing benefits under the Scheme (active member), has a deferred pension under the Scheme (deferred member), or is receiving a pension from the Scheme (pensioner member). In some cases this may also include pension credit members of the scheme.
Opting Out	When an individual chooses not to become a member of the firefighters' pension scheme, or chooses to leave the scheme, if already a member.
Pension Sharing Order	An Order made by the Court on divorce or dissolution of a civil partnership. It awards a share of pension benefits to a former spouse or civil partner, and they become a member of the Scheme in their own right.
Pensioner Member	Someone receiving a pension benefit from the Scheme.
Reformed Scheme	Firefighters' Pension Scheme 2015
Remediable Service	Any pensionable service that occurs in the remedy period, between 1 April 2015 and 31 March 2022 inclusive, and which meets the criteria set out in the Act.
Remediable Service Statement (RSS)	A Remediable Service Statement is a document which will clearly show the value of pension scheme benefits available under the election. Among other information, it will show the default entitlement as the value of legacy pension benefits up to and including 31 March 22 (or end of service if earlier) and then 2015 Reformed Scheme from that point forward (if there was service on or after 1 April 22). The alternative will show legacy pension benefits up to and including 31 March 2015 and then 2015 Reformed Scheme benefits from that point forward.
Remedy Period	The Government proposed that all eligible members of relevant public service pension schemes would be given the opportunity to choose which model of scheme benefits they would wish to receive (legacy scheme or the

	reformed 2015 scheme) for the period of 1 April 2015 to 31 March 2022 inclusive – known as the remedy period.
Retrospective Remedy	The roll back of members to their respective legacy schemes and a subsequent choice of benefits for the remedy period.
Roll Back	The term used to describe the process by which in- scope members are placed back into a relevant legacy pension scheme(s) for the remedy period.
Scheme Manager	The Scheme Manager is responsible for managing and administering the firefighters' pension schemes. Individual forces are the Scheme Managers for the firefighters' pension schemes. Whilst authority is delegated to administrators, overall responsibility remains with the Scheme Manager.
Simple Interest	Simple interest is calculated on the principal, or original, amount and the time period elapsed.
Surviving Adult	A surviving spouse, civil partner or eligible partner dependent on the meaning within individual firefighters' pension scheme rules.
Transfer Value	The value of the member's pension benefits, expressed as a sum of money when a member requests to transfer between two pension schemes.
Treasury Directions	Treasury Directions, which are contained in the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022, specify how certain powers under the Act are to be used by public service pension schemes in their scheme regulations.



© Crown copyright 2023

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.uk/government/publications.

Any enquiries regarding this publication should be sent to us at public.enquiries@homeoffice.gsi.gov.uk.