Ministry of Defence

Retrospective Remedy FAQs

CONTENTS PAGE

Immediate Choice

1. If I retire before 1 October 2023, what pension benefits will I receive?

- Where members retire before the retrospective remedy is implemented , they will initially receive benefits from their current scheme.

- They will then be given a choice of benefits for the remedy period as soon as possible after implementation and if there is any change in entitlement as a result of their election, this will be backdated to when the member's benefits became payable.

2. Is all of the legislation to pension remedy now in place?

- No. There are still detailed changes that need to be made to scheme regulations. These will be made using the powers in the PSPJOA 2022 and need to be in force by 1 October 2023 at the latest.

- There are also some situations where changes to pension rights due to the pension remedy produce disproportionate tax results that cannot be resolved through powers provided in the PSPJOA 2022. Therefore, the Government will also be making changes to tax legislation to ensure that the remedy can be implemented smoothly. HMRC consulted on the first set of tax regulations from December 2022 to January 2023; these regulations were subsequently made and laid on 6 February 2023 coming into force on 6 April 2023. Further tax regulations will be consulted upon, and finalised, ahead of implementation of the remedy.

- The MOD is not consulting on tax regulations as this is a non-discretionary area and is being led by HMT and HMRC.

Scope of the remedy

3. Does the PSPJOA 2022 remedy the discrimination identified by the Court of Appeal?

- Together with changes being made through tax regulations using the powers in the Finance Act 2022 and scheme regulations made under the Act, the PSPJOA will provide a remedy for all those affected by the discrimination identified by the Court of Appeal.
- This remedy will apply equally to claimants in the employment tribunal and non-claimants and there is no need to make a claim to the employment tribunal to benefit from the changes.

4. Why doesn't the remedy offer compensation for non-financial losses?

- The remedy is intended to put members back into the same financial position as if the discrimination had not occurred. This includes provisions to allow compensation for financial losses where members can demonstrate they would previously have taken a different course of action were it not for the discrimination. If members feel they have suffered additional losses, this will need to be taken up through the normal channels.

5. Why have some groups received settlement payments, will I get one?

- The remedy is intended to put members back into the same financial position as if the discrimination had not occurred and will apply equally to eligible members irrespective of whether they have lodged a claim in the Employment Tribunal. We are not able to comment on ongoing litigation.

Tax

6. **How will the McCloud remedy affect my tax position?**
    - Most members will see no changes to their tax position as a result of the remedy or will receive a refund as a result of the remedy.
    - In the instances where your tax liability does increase, in the vast majority of cases this will reflect an increase in value of your pension benefits received.
7. **Will members have to pay additional taxes as part of the remedy? If so, how big will their tax bill be?**
    - Most members will see no changes to their tax position as a result of the remedy; if a member has overpaid tax, they will receive a refund for in-scope tax years and compensation for out-of-scope years.
    - In the instances where a member's tax liability does increase, this will only apply for in scope tax years, in the vast majority of cases this will reflect an increase in value of their pension benefits.
    - Tax is a personal responsibility, and you may wish to seek external financial advice.
8. **How many individuals will need to pay extra tax?**
    - Given that the remedy relies largely on a member's choice, which will differ depending on their circumstances, it is not possible to give a meaningful estimate of the number of tax corrections needed as a result of the remedy.
    - However, most members will see no changes to their tax position or will receive a refund for in-scope years as a result of the remedy. This is because the accrual rate in the reformed scheme is generally higher than the accrual rate in the legacy scheme.
    - In the instances where a member's tax liability does increase, in most cases this will reflect an increase in value of their pension benefits.
9. **What changes are being made for tax?**
    - The tax system will in most instances work in the usual way and follow the new pension rights accrued from the remedy taking effect. There are some situations where changes to pension rights due to the pension remedy produce disproportionate tax results that cannot be resolved through powers provided in the PSPJOA 2022.
    - Therefore, the Government will be making changes to tax legislation, using provisions contained in the Finance Act that received Royal Assent on 24 February 2022, to ensure that the remedy can be implemented smoothly.
    - HMRC consulted on the first set of tax regulations from December 2022 to January 2023; these regulations were subsequently made and laid on 6 February 2023. Further tax regulations will be consulted upon, and finalised, ahead of implementation of the remedy.
10. **Why are you making people pay tax based on their legacy pension benefits when they might ultimately choose new scheme benefits?**

- When individuals are rolled back into their legacy schemes, they will be legally entitled to receive legacy benefits which have accrued during remedy period – and that needs to be reflected in their tax treatment.

- In the majority of cases this is likely to result in a refund of overpaid tax and/or compensation (in the form of increased pension benefits, or a cash sum), rather than additional tax being due. If an active or deferred (someone who is no longer building up entitlement) member then chooses reformed scheme benefits when they retire, those benefits will be adjusted at that point, and tax applied as appropriate to ensure no disproportionate effect.

- Where the choice of reformed scheme benefits, which arrive all at one point, means a higher tax bill that year than if the individual had chosen to keep legacy benefits for remedy period years, the Government will intervene – this is because the design of the remedy could trigger a disproportionately high AA charge.

11. **Tax implications of member's choices will be complex and require specialist support – what plans does the MOD have to resource support systems and enable members to make the best choices?**

    - Where possible, the MOD will take proportionate steps to minimise the administrative burden on members. Although ultimately, decisions made by members will be individual choices.

    - There will also be further guidance to complement the existing suite of HMRC and MOD guidance, which is already in place to help individuals with their tax affairs.

    - Ultimately, tax is a personal responsibility, and you may wish to seek external financial advice.

    - Compensation may be provided where a member has incurred reasonable additional costs as a result of changes to their tax position, i.e. where receipts or invoices can be provided by a tax adviser or accountant, who helped to resubmit information to HMRC.

12. **Will the remedy require individuals to undertake extensive paperwork to ensure they receive appropriate compensation, even though this is the Government's mistake?**

    - In practice, most individuals will not have to correct their position, either through the tax system or by claiming compensation.

    - For those that do, the Government has worked hard to remove additional burdens that arise from addressing the discrimination.

    - Where possible, the Government will take proportionate steps to minimise the administrative burden on members, but it will not be possible to completely remove individuals from this process in all cases.

    - If as a result of the remedy an individual has less tax to pay, they may be able to claim a repayment of overpaid tax from HMRC. If they are unable to get a repayment through the tax system, the Act allows them to claim compensation (depending on the member's circumstances this could be in the form of increased pension benefits or a cash sum).The MOD acknowledges the need to provide clear and accurate information to members going through this process, to enable them to take the required actions. There will be material to support individuals through this process.

13. **The tax changes are all far too complicated – how do you expect anybody to comply?**

- The existing legislation and AFPS rules covering public service pensions were not created with a view to making retrospective pension provision. So, the changes made by the PSPJOA 2022 and other legislation are not straightforward but, as far as individuals are concerned, the complex changes are being made 'under the bonnet'.

- Individuals will have a choice to make, and will receive a clear breakdown of their choice in their RSS. The majority will be provided with a simple choice between two options.

- However, for more complicated scenarios, the MOD acknowledges the need to provide clear and accurate communication and information to members going through this process. There will also be further guidance to complement the existing HMRC guidance and schemes' processes which are already in place to help individuals with their tax affairs.

14. What measures will be in the PSPJOA 2022, Finance Act and Scheme Regulations?

- The PSPJOA 2022 contains the core remedy, as well as the bespoke remedy measures for the Judicial Pension Scheme and Local Government Pension Scheme and was published on 20 July 2021. It sets out what the core remedy will mean for member's voluntary contributions (Added Pension), benefits, pension payments and compensation.

- Some elements of the Act concerning the timing of changes to pension rights, and deeming provisions regarding which schemes are making or receiving payments, have been included to ensure proportionate and reasonable tax outcomes, in line with policy set out in the consultation and published response document.

- The tax system will in most instances work in the usual way and follow the new pension rights accrued from the remedy taking effect.

- There are some situations where changes to pension rights due to the pension remedy produce disproportionate tax results that cannot be resolved through powers provided in the PSPJOA 2022. Therefore, the Government will be making changes to tax legislation, using provisions contained in the Finance Act that received Royal Assent on 24 February 2022, to lay tax regulations, which will ensure that the remedy can be implemented smoothly. HMRC consulted on the first set of tax regulations from December 2022 to January 2023; these regulations were subsequently made and laid on 6 February 2023. Further tax regulations will be consulted upon, and finalised, in the coming months.

15. When will the tax regulations be ready?

- Further tax legislation, in the form of tax regulations, will be required to cover some situations where changes to pension rights due to the pension remedy produce disproportionate tax results that cannot be resolved through powers provided in the PSPJOA 2022.

- This will be delivered using provisions contained in the Finance Act that received Royal Assent on 24 February 2022. HMRC consulted on the first set of tax regulations from December 2022 to January 2023; these regulations were subsequently made and laid on 6 February 2023. Further tax regulations will be consulted upon, and finalised, ahead of implementation of the remedy.

16. Public Service Pensions Remedy and Spring Budget 2023

- The Public Service Pensions Remedy is intended, as far as possible, to put members into the same position that they would have been in had the discrimination not occurred.

- The changes to the Lifetime Allowance (LTA) or Annual Allowances (AA) announced at Spring Budget 2023 will not alter this approach.
- A first tranche of tax regulations for the remedy were laid on 6 February 2023 and further tax regulations will follow. The timescales for these further tax regulations are not expected to be significantly impacted by the changes to LTA and AA.

Treasury Directions

17. Why was so much of the retrospective remedy done in Treasury Directions?

- The Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022 were made on 14th December 2022 and came into force on 19th December 2022.
- This is in line with the normal use of Treasury and Department of Finance directions in this way, for example directions in relation to scheme valuations, or for increasing public service pensioners' Guaranteed Minimum Pensions when they would not otherwise be increased.
- The Directions ensure that, where Treasury ministers (or in relation to Northern Ireland, the Department of Finance) consider that a consistent approach is necessary or desirable, the Treasury (or Department of Finance) may give directions to the other schemes.
- This allows the MOD to make regulations that work best for them, while ensuring that where a particular outcome is desirable, it is achieved.

18. **How were interest rates decided?**

The interest rates were determined by the Government's three objectives, to firstly reflect the position members would have otherwise been in without the discrimination having occurred, secondly to recognise the circumstances of the award and thirdly to not unduly burden the taxpayer.

Timeline

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

- The Government has legislated through the PSPJOA 22 to implement a deferred choice underpin within schemes. All eligible members will be treated equally and will be able to choose to receive pension scheme benefits from either scheme at the point benefits become payable. Where necessary, payments will be backdated.
- The MOD made prospective regulations in 2022 to bring into effect the closure of all legacy schemes on 31 March 2022 and move members to the reformed scheme. These ensure members are placed on in equal position from this point onwards.
- The MOD is consulting on the retrospective scheme policy changes which will ensure that the detail necessary for the remedy to be implemented in each affected scheme is in place. The scheme regulations to underpin that policy will be put in place by 1 October 2023.
- Scheme regulations will be used for the various purposes listed throughout the Act, including the process by which a member can make a choice or “election” to receive new scheme benefits, for interest to be paid to a member or scheme on any amounts owed to or by the scheme, to make provision for pension credit members, to make provision for members to receive remediable service statements, to provide for members who have made additional voluntary contributions and for members who have already benefited from an immediate detriment remedy.
- Where the changes legislated for through the Act produce disproportionate tax results that cannot be resolved through powers provided in the PSPJOA 2022, further changes, in the form of tax regulations, will be made using provisions contained in the Finance Act that received Royal Assent on 24 February 2022. HMRC consulted on the first set of tax regulations from December 2022 to January 2023; these regulations were subsequently made and laid on 6 February 2023. Further tax regulations will be consulted upon, and finalised, in the coming months.