



Home Office

PUBLIC SERVICE PENSIONS: THE FIREFIGHTERS' PENSIONS (REMEDIABLE SERVICE) REGULATIONS 2023

McCloud / Sargeant remedy: phase two (retrospective)

Government response

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Introduction and contact details

This document is the post-consultation report for the consultation which was published on 28 February 2023 and closed to responses on 23 May 2023 in relation to firefighters' pensions. The associated regulations are the Firefighters Pensions (Remediable Service) Regulations 2023', which are free-standing regulations rather than amending regulations.

Further copies of this report and the consultation paper can be obtained by contacting at the address below:

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

Email: Firepensionspublicservicepensionsremedy@homeoffice.gov.uk

This report is also available at <https://www.gov.uk/government/consultations/firefighters-pension-scheme-retrospective-remedy>

Alternative format versions of this publication can be requested from the Home Office, using the above contact details.

Complaints or comments

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

1. Background

- 1.1 The government confirmed in a written ministerial statement on 15 July 2019 that it accepted that the Court of Appeal’s judgment in *Lord Chancellor v. McCloud* [2018] EWCA Civ 2844, [2019] ICR 1489 (“McCloud”) had implications for all schemes established under the Public Service Pensions Act (PSPA) 2013, since all those schemes had provided transitional protection arrangements for older members. The government confirmed that it would take steps to address the difference in treatment across all those schemes.
- 1.2 The Public Service Pensions and Judicial Offices Act 2022 (PSPJOA) 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 fire 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 by 1 October 2023, to remedy the discrimination that had taken place between 1 April 2015 and 31 March 2022 (the retrospective remedy).
- 1.3 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. This second stage is to deliver the retrospective remedy.
- 1.4 The consultation welcomed views from interested parties on the draft regulations and policy intent to implement the retrospective phase of the McCloud/Sargeant remedy. There was specific interest from views of groups that represent firefighters, fire and rescue authorities, and others responsible for implementing the remedy changes.
- 1.5 The consultation asked 10 questions in relation to specific elements of the retrospective remedy: In and Out of Scope Deferred Choice Underpin (DCU) and Immediate Choice (IC), DCU timing of remediable service statement (RSS), Transfers, Added Pension, Ill-Health Retirement, Contingent Decisions, Bereavement and Child Pension and any additional changes that may be required.
- 1.6 This report summarises the responses, including how the consultation process influenced the further development and final shape of the policy/proposal consulted upon.

2. Executive summary

- 2.1. On 28 February, the government launched this consultation on the draft Firefighters' Pensions (Remediable Service) Regulations 2023 to address the changes being made to implement the 'retrospective remedy'. This involves making provisions to remove the effect of the transitional protections in place between 1 April 2015 and 31 March 2022 ('the remedy period') and implement provisions for a DCU. The DCU will give members a deferred choice of pension benefits at their point of retirement in respect of 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 remedy period. The regulations to enact the retrospective remedy will come into effect from 1 October 2023. Firefighters' pension administrators will contact those members whom the remedy affects to notify them of the changes and what action will be required of them. A final set of regulations to ensure all eligible members (or their member representative) receive a choice of which pension scheme benefits they would prefer to have for their remedy period service is attached to this consultation response.
- 2.2. The draft regulations also included provisions 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 monetary loss arising from the discrimination or operation of the remedy.
- 2.3. Consideration has been given to further provisions that may be needed, beyond those in the published draft regulations that accompanied the consultation.
- 2.4. The Equality Impact Assessment accompanying the consultation was updated to take account of comments provided during the consultation period. The updated Equalities Impact Assessment is attached.
- 2.5. A list of respondents is at Annex A.
- 2.6. A Glossary of terms is at Annex B

3. The Retrospective Remedy

3.1. As individual members' circumstances differ, the impact of implementing the remedy will vary. The firefighters' pension scheme managers will provide all eligible member and member representatives with information about the benefits available to them under the remedy and to enable them to make a choice of benefits in an RSS.

Who will be in scope for pension remedy?

3.2. To be eligible for the retrospective pension remedy, an individual 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. This is further defined in section 1(5)(b) PSPJOA.

3.3. Special eligibility provision has been made for individuals who, on 31 March 2012, were employed as firefighters but were not members of the firefighters' pension scheme but had an entitlement to be a member.

3.4. Since 10 March 2022, those who meet the above criteria are now eligible for the retrospective remedy. These members can be split into cohorts with varying circumstances:

- active members
- deferred members
- pensioner members
- individuals entitled to dependant and/or death lump sum benefits in respect of deceased members with eligible remedy period service.

3.5. These cohorts will also include members who joined the firefighters' pension scheme (the 2006 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.

3.6. 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 retrospectively opt back into the scheme, subject to certain conditions. See the section of this document on Contingent Decisions (paragraphs 4.30 onwards) for further detail.

Who will be out of scope for pension remedy?

3.7. The following members are out of scope for pension remedy:

- members who first joined pensionable public service on or after 1 April 2012; and
- members who have had a break in pensionable public service of more than five years, where that break fell into either or both of the following:
 - Started sometime on or before 31 March 2012 and the last day was sometime on or after 31 March 2012
 - Started sometime on or before 1 April 2015 and the last day was sometime on or after 1 April 2015.

Legislation

3.8. 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 provision in 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. Legislative changes are required to implement the proposed remedy.

3.9. The PSPJOA also provides for HM Treasury to make HM Treasury Directions [Public Service Pensions and Judicial Offices Act 2022: Treasury Directions - GOV.UK \(www.gov.uk\)](#), which specify how certain powers under the PSPJOA are to be used when making regulations to specific public service pension schemes.

3.10. HM Revenue and Customs (HMRC) are responsible for making regulations¹ which make tax changes to the tax framework because of the public service pensions remedy. Those regulations give pension scheme administrators details of additional tax changes they will need to consider because of the remedy.

Remedy Period and Remediable Service

3.11. 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 ended on 31 March 2022, with the transfer of all remaining active members in the legacy schemes to the 2015 reformed firefighters pension scheme. The choice of scheme design (the core of the retrospective pension remedy) is only offered in relation to pensionable service accrued during the remedy period.

¹ The Public Services Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023 - GOV.UK (www.gov.uk); The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023 (legislation.gov.uk); The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) (No. 2) Regulations 2023 - GOV.UK (www.gov.uk)

3.12. Pensionable service accrued by in-scope members under a legacy or 2015 reformed scheme during the period 1 April 2015 to 31 March 2022 inclusive 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 scheme during the remedy period.

Roll Back

3.13. Roll back is the term used to describe the process by which in-scope members are placed back into the relevant legacy pension schemes for remedy period service. Under the retrospective remedy, all in-scope members will roll back to the scheme to which they would have belonged had the 2015 reformed 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 because of the roll back. At retirement, in-scope members then get a deferred choice as set out below.

Deferred Choice (DC)

3.14. The DC is set out in section 10 of the PSPJOA and applies to members not yet in receipt of benefits relating to remediable service (to include deferred and active members). At retirement they will receive a choice ('make a choice') of either the 2015 reformed scheme benefits, or their relevant legacy scheme benefits for any service accrued during the remedy period. All benefits accrued in the remedy period will be paid from the legacy scheme, regardless of the member's choice, but will be calculated according to the scheme that has been chosen.

3.15. Schemes are required to specify a period of time during which the member must make this choice. This must not be earlier than one year before the date it is expected that, if a choice to receive 2015 reformed scheme benefits is made would become payable in relation to the member's remedy period service. The choice is deemed to take effect immediately before the member becomes a pensioner. Where a member dies in service, the choice is deemed to have taken effect immediately before the member's death.

3.16. If an active or deferred member does not communicate a choice as to which scheme benefits, they wish to receive by the end of the choice period, schemes may use the powers in section 12 of the PSPJOA to deem a choice of benefits to have been made.

3.17. A member will be able to request an RSS, setting out the pension benefits available to them through a DC forecast, providing a suite of information as set out in section 29 of the PSPJOA and section 20 of HM Treasury Directions. Once the scheme manager has provided the RSS, scheme regulations will provide a member must make their choice within twelve weeks of receiving the RSS. A DC will be able to be revoked up to 10 working days before benefits are due to come into payment.

3.18. Where a member dies before making a choice then the member representative makes a choice on behalf of the member. The firefighters' pension

scheme must determine who the eligible decision maker is that can make a DC on behalf of a deceased member as defined in regulations.

Immediate Choice (IC)

3.19. IC applies to pensioner members, or member representatives of a deceased member, who are already receiving benefits relating to remediable service (IC cases). IC will also apply to members who left employment during the remedy period with a deferred pension because they did not qualify for ill-health retirement but will qualify for a retrospective ill-health pension under their alternative scheme. They will be given a choice as soon as practicable after 1 October 2023. The PSPJOA requires the choice to be made within 12 months of the member receiving their RSS or such later time that the scheme manager deems reasonable.

Changing a choice

3.20. 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 IC is irrevocable.

3.21. If a deferred/active member has made a DC and then dies prior to those benefits becoming payable, their choice will lapse. The eligible decision maker (member representative) will then receive a new RSS and will make an IC.

Default position where no choice is made

3.22. In cases where a member fails to make a choice, the default position is that a member's relevant legacy scheme benefits would be payable in respect of the remedy period service. However, the PSPJOA does provide that pension schemes may include in their rules provision which allows the scheme manager to treat a choice as having been made. The Home Office has considered whether and how this power should be used in the context of the firefighters' pension schemes.

4. Consultation

- 4.1. During the consultation period, the Home Office engaged with the Firefighters' Pensions Scheme Advisory Board (England) ('the SAB'), holding sessions between 2021 and 2023.
- 4.2. The SAB was established under section 7 of the Public Service Pensions Act 2013 and the Firefighters' Pension Scheme (Amendment) (Governance) Regulations 2015. It comprises firefighter's employer and member representatives, and part of its role is to provide advice to the Home Secretary on the merits of making changes to the firefighters' pensions scheme.
- 4.3. The aim of the sessions was to ensure stakeholders were given the opportunity to directly engage with the Home Office on the scheme level changes, to ensure the draft regulations would achieve the stated policy aim. A further aim was to give stakeholders an opportunity to seek clarification on any aspects of the consultation and the draft regulations.

Policies consulted on:

Interest

- 4.4. Interest payments must be calculated and paid on relevant amounts in accordance with the PSPJOA and HM Treasury Directions. It was important that this was included in the consultation to understand if there were any interactions with the firefighters' pension schemes' regulations that would not work without amendments.
- 4.5. There are several specific circumstances in which interest may arise. For example, differences in member contributions and tax relief payable (including missed member contributions), differences in pension amounts received following a choice for other scheme benefits, voluntary member contributions, and differences in lump sum paid to members whose benefits are in payment prior to the DC being introduced.
- 4.6. In line with HM Treasury Directions, interest is applied to individual calculations and is not netted off. 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 because of the retrospective phase of the remedy.

4.7. A 'netting off' approach, where payments in different directions could offset each other before applying interest, was considered but ultimately rejected as to do so would not have been in members' favour.

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

4.8. The PSPJOA requires that schemes issue members with an RSS: section 29 of the PSPJOA and Direction 20 of HM Treasury Directions set out what must be included in such statements.

4.9. This legislation also covers who is entitled to an RSS, the time limit within which the first RSS may be sent following the implementation of the remedy and the frequency with which various categories of member receive them after that point.

4.10. The purpose of an RSS is:

- I. to provide a member with the information they require to make a choice between legacy and reformed scheme benefits
- II. to start the process for making various choices for IC members
- III. to provide an opted-out member with information they require to decide whether to opt back into the scheme

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

4.12. An ABS provides members with an overview of their current pension accrual. An RSS will do much the same but is a requirement under the PSPJOA and the remedy regulations rather than existing regulations. This type of statement must include the alternatives for pension accrual during the remedy period under both 2015 reformed and legacy schemes.

Transfers

4.13. As a consequence of all remedy period service being rolled back into a member's relevant legacy scheme, the regulations will make provisions to allow the scheme to deal with any transfers into the reformed scheme that took place during the remedy period at the point the member makes a choice.

4.14. 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.

4.15. 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 (for the purpose of the fire pensions scheme) between 31 March 2015 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 of the PSPJOA.

Additional Pensions (AP)

4.16. As the service in the remedy period must be rolled back in the legacy schemes, any voluntary contributions for such additional benefits must be addressed in implementing the remedy. In the 2015 reformed pension scheme, 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.

4.17. There are 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. This means that all such members will be dealt with under the compensation provisions.

Contributions

4.18. 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).

4.19. 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 rolled back to the 1992 firefighters' pension scheme for their remedy period service will owe the scheme the difference in contributions.

4.20. 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 rolled back to the 2006 firefighters' pension scheme for their

remedy period service will immediately be owed by the scheme the difference in contributions paid as compensation.

- 4.21. This means that many eligible members will have a contributions adjustment and a record of contribution adjustments will be needed. This is set out in more detail in this document.

III Health Retirement

- 4.22. 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.

- 4.23. To qualify for a lower-tier ill-health pension a firefighter must be assessed and determined 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 assessed and determined incapable of undertaking any other regular employment averaging not less than 30 hours a week over a minimum period of 12 months.

- 4.24. Any legacy scheme members who transitioned into the 2015 reformed pension scheme before being ill-health retired would have been assessed and determined under the 'single source' IHR arrangement. The 'single source' IHR 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.

- 4.25. An ill-health pensions 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) under the single source rules, and any entitlement to a higher tier pension is calculated entirely in accordance with the 2015 reformed pension scheme regulations.

Abatement

- 4.26. Abatement applies in the legacy firefighters' pension schemes. It does not apply to benefits accrued under 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.

- 4.27. Section 6(4)(a) PSPJOA provides that a member should not see any changes to 2015 reformed pension scheme benefits in payment unless no election has been made by the end of the election period. If a member is in receipt of 2015 reformed pension scheme benefits and makes choice to continue to receive 2015 reformed pension scheme benefits, their pension will not be abated. Only if a member chooses legacy scheme benefits or the default applies would they see a change.
- 4.28. 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. The legacy schemes provide for the abatement of the member's abating pension where a member re-enters employment with any fire and rescue authority.
- 4.29. There should be very few members that will need to consider further abatement applying as part of their remedy choice. This is as a result of the way the protections worked for fire pension scheme members, which meant at the vast majority of those who have been retired at this point will have done so from their legacy scheme.

Contingent Decisions (CD)

- 4.30. A CD is a decision taken by a member, relating to their membership of the firefighters' pension scheme, that would have been different had it not been for the discrimination identified by the courts. The rectification offered by the scheme 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.
- 4.31. For all CD 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 manager to consider what needs to be done to alert members to the claims process. The members must confirm the decision that was made and what they would have done differently had had the discrimination identified by the courts not occurred.
- 4.32. Evidence to support the CD claim should be submitted with the claim form if applicable/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.
- 4.33. On receipt, the scheme manager considers whether the member qualifies for the CD, for example, for opt-out cases would they be in-scope for remedy if the contingent decision was reversed.

4.34. There are three categories of CD in the fire pension scheme for which specific provisions has been made:

- 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 - CD

4.35. Members who made an election to opt out relating to the pension reforms prior to their transition date will be able to make a CD claim. If successful a member will need to pay the contributions, they would have made plus interest as set out in the PSPJOA and HM Treasury Directions for the opted-out period of remedy period service. Further details on payment options are in this document in para 6.108.

4.36. 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 manager that they had a compelling and reasonable case to do this, schemes managers will need to use provisions in the existing scheme rules, if available, to allow reinstated service in respect of any pre or post-remedy period service.

Additional Service - CD

4.37. 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. There are limits on the purchase of added years in the legacy schemes which are based on the total pension that a member would accrue if they continued working up to retirement age.

4.38. Any contributions that should have been made will have to be paid with plus interest added in line with payment options available under the adjustment of contributions.

4.39. 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.

4.40. 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 - CD

4.41. This is where members chose to transfer (in or out) during the remedy period and now wish to revisit the decision. Members who transferred in can leave the transfer until the point of making a choice in case all or part of the transfer cannot be converted to the legacy scheme and compensation is necessary instead. Those who transferred out during will be entitled to a calculation to see if any further Cash Equivalent Transfer Value (CETV) is necessary.

Divorce

4.42. Pension rights are 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, the parties must agree how to use this value in any financial settlement.

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

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

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

4.45. PSOs rely on the scheme providing a Cash Equivalent Transfer Value (CETV) that can be considered when deciding how assets should be split. The CETV is very likely to be different under the legacy and 2015 reformed pension scheme rules, 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.

4.46. 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 because of the member's choice of benefits and the ex-spouse's pension benefits will be kept at the same level going forward (unless the

pension debit member had tapered protection in which case there might be a change if both options resulted in a lower CETV than the combination the member previously had).

How will this work for cases that arose before implementation?

4.47. 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 measured 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?

4.48. Where a case arises after implementation but before the member has made a choice of benefits, 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.

4.49. 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

4.50. Sadly, some eligible members may have died before they have made a choice in respect of their remedy period service.

4.51. If the eligible deceased member had not made a choice, then relevant scheme regulations will 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 benefits, or 2015 reformed pension scheme benefits 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.

4.52. 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.

4.53. 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

4.54. 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 because of the member representative's decision. This is based on the powers in section 22 of the PSPJOA.

Overpayments and Underpayments – Pensions in Payment

4.55. 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 must be repaid.

4.56. Interests 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 letter from HM Treasury to the Government Actuary, which is published alongside the HM Treasury directions, this sets out the rationale for the interest rates / policy in the directions.

4.57. 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. HM 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.

4.58. 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 because 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.

4.59. 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 a choice, as a choice for 2015 reformed scheme benefits. This is because the wide range of benefits offered by the various firefighters' pension schemes, and the difficulty of assessing 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). To do otherwise 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.

4.60. 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 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.

Next steps

4.61. Most of the responses received were from individual scheme members, member and employer representatives of the firefighters' pension scheme or other stakeholder groups. These respondents represented a range of views on the government's policy to address the discrimination identified in the McCloud/Sargeant cases and on the scheme level changes proposed by the Home Office.

4.62. It is important to point out that the summary of findings is based on the small number of responses received and that they are not necessarily representative of the views of all stakeholders affected by the proposed remediable service provisions. The Home Office considered the responses and identified the main

points of support and challenge raised by respondents. These points and the Home Office's response to them, are outlined in section 5 below.

5. Summary of responses

- 5.1 A total of 38 responses to the consultation paper were received. Of these, 13 were sent on behalf of fire organisations; we receive one response from a serving MP and 24 were sent by individuals, who were largely serving and retired firefighters.
- 5.2 22 of the responses were submitted through an online survey, while the remaining 17 responses were received via email or letter, which did not necessarily follow the same format as the online survey or indicate which questions were being answered by the comments provided. Where possible, the content of these responses has been distributed across the open response questions, to where they fitted best. These responses may have indicated agreement or disagreement but to avoid error in interpretation, responses to closed questions have not been interpreted from open responses unless they had been formatted to fully replicate the survey.
- 5.3 Each question contained a closed question with respondents invited to indicate one of two responses: Yes or No. Each question was followed by an open question (either 'if yes, please explain why' or 'if no, please explain why'), each accompanied by an open text box. This enabled respondents to respond to the open question but also acted as an opportunity for respondents to add any additional comments. The open responses were analysed for common themes and levels of support for proposed measures.
- 5.4 Respondents were not required to answer all the questions in the consultation. Accordingly, not all 39 responses answered every question and there were no questions that were answered in all 39 responses. This is reflected in the analysis below.
- 5.5 For most questions, respondents were asked to indicate whether they felt various aspects of the policy proposals achieved what they aimed to achieve. In the analysis of these questions, responses for 'yes' have been grouped to be described as those who agreed with the proposals. Similarly, responses for 'no' have been grouped as those who disagreed with the proposals. We have also grouped those who did not answer yes or no as 'zero responses'.
- 5.6 Many of the individual responses focused on a dissatisfaction with the pension reforms that were introduced in 2015 and the age retirement issue, which is where members are not able to have their reformed pension in payment at the earliest point their legacy pension is payable. Both issues arise due to changes made and introduced in 2015 and are therefore not part of this final set of regulations to ensure all eligible members (or their member representative) receive

a choice of which pension scheme benefits they would prefer to have for their remedy period service.

- 5.7 It is understandable that the age retirement issue is important to members. However, this issue is a consequence of the move from an age and service-based pension scheme to one that is based on age. The “two parts” nature of the benefits and the different points at which they are paid was set out in 2013 as part of the long-term reforms that were introduced in 2015.
- 5.8 In addition, there were concerns about the consultation being delayed and/or at a late stage of the process of getting the remedy in place. While it is correct that the need for remedy has been known for some time, it is the complex and interconnected nature of the changes needed that has meant that finalising the policy and regulations any sooner was not achievable.
- 5.9 There were also concerns about issues that are not directly to do with this remedy and some respondents would have liked us to consider other changes as part of these regulations. Given the prescribed powers in the PSPJOA, other policy matters cannot be part of these remedy scheme regulations and were outside the scope of the issues consulted on. For example, a consolidation exercise for the legacy pension schemes, a unified definition of pensionable pay across the pension schemes, and concerns about the pension age of the 2015 scheme leading to more ill-health retirement.
- 5.10 There were concerns that there are too many ‘discretionary powers’ for scheme managers which may lead to inconsistencies across the locally administered schemes, with requests for the Home Office to provide guidance. The nature of the provisions these regulations are making, and the complexity of personal circumstances means that individual decisions will have to be made by scheme managers.
- 5.11 There were concerns about the application of interest. The provisions governing interest are not part of the change being made in this set of regulations – those provisions are set out in the PSPJOA, and the directions made under those provisions.
- 5.12 It was noted on multiple different issues that the remedy will require careful explanation/central guidance to members. It is not the role of regulations to provide guidance or tools – they are there to provide the framework within which the scheme operates. There was also a general concern that the accompanying actuarial guidance is not yet available to go alongside the regulations. The Home Office can confirm that the guidance is being prepared and the Government Actuary’s Department (GAD), as the scheme actuary, are liaising with stakeholders to agree a delivery schedule that best supports implementation.

- 5.13 On Compensation, and other issues, LGA were concerned that the draft regulations gave no guidance to scheme managers. However, it should be noted that it is not the role of regulations to provide guidance or tools – they are there to provide the legislative framework within which the scheme operates.
- 5.14 In response to all questions some responses raised concerns that the regulations were drafted in a way that is difficult for individual members to understand. Pensions are a complex technical subject and while we have made efforts to ensure that the drafting is as straightforward as possible, some aspects of the remedy are necessarily complex. It is key that the regulations use appropriate language and cross-reference with other relevant legislation so that they operate correctly.
- 5.15 The regulations will come into effect on 1 October 2023. Overall, this meets the aim of removing the discrimination and making sure that public service pensions are reformed appropriately. Firefighters' scheme managers and employer representatives are aware of the current proposals and have the opportunity now to make the necessary preparations to internal processes in advance of these changes.

6. Responses to specific questions

1. Question 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?

Summary of responses

- 6.1 27 responses were received: 18 responded yes that the provisions clearly define which members met the criteria to be eligible and 8 said no, they did not. Others provided commentary without a clear 'yes or no' response. The summary below covers explanatory open text responses and points made during informal engagement with fire sector stakeholders.
- 6.2 Where open text was given, many focussed on more general issues that did not directly answer the question, such as their dissatisfaction/disagreement with the reforms overall and how they did not find the drafting of the regulations easy to interpret.
- 6.3 Other responses noted that they were concerned about the exclusion of scheme members who joined a legacy scheme between April 2012 and March 2015 and did not feel that adequate justification for this approach had been provided.
- 6.4 Other responses also raised concerns about the absence of references in the remediable service legislation to remedy eligibility criteria, and about ensuring those individuals who had opted out of the legacy schemes on or before 31 March 2012 are eligible for remedy.
- 6.5 Some responses referred to the impending Matthews' remedy and highlighted the need for both McCloud and Matthews remedies to work collectively.

Government response

- 6.6 After considering the responses to the consultation and informal engagement with stakeholders, the government is content that the proposed changes will clearly define which members of the firefighters' pension schemes will be eligible for the remedy as defined in the PSPJOA.
- 6.7 On the general issues, as noted in the summary at paragraphs 5.6 to 5.9, concerns about pension reform and related issues, and the language used in drafting are not part of this consultation. Also, we address concerns about the language used in the regulations in paragraph 5.14.
- 6.8 The overarching approach to the remedy, including which cohorts would be eligible, was consulted on in *Public service pension schemes: changes to the*

transitional arrangements to the 2015 schemes in 2020. The conditions for eligibility for the remedy were therefore outside the scope of this consultation on retrospective regulations for the firefighters' pension scheme.

- 6.9 The discrimination identified by the courts was between those who were in service on 31 March 2012 and received full transitional protection and those who were in service then but did not receive full transitional protection because they were more than ten years from NPA. Members who first joined any public service pension scheme after 31 March 2012 were ineligible for transitional protection regardless of their age, and therefore were not subject to the discrimination identified by the court and are not within scope of the remedy.
- 6.10 Eligibility to remedy relies entirely on the PSPJOA, though the scheme regulations do cross-reference it. Specific provision has been made at Part 1, Chapter 1, paragraph 1 of the PSPJOA for individuals who were active firefighters on 31 March 2012 but who were not a member of the legacy scheme i.e., opt-outs. This provides such individuals with an entitlement to McCloud remedy for any remedial service.
- 6.11 The importance of the interaction of Matthews and McCloud remedies is recognised. The Matthews remedy will deal with an individual's service up to and including 31 March 2015 whereas the McCloud remedy deals with service accrued between 1 April 2015 and 31 March 2022 inclusive. It is envisaged that the Matthews remedy will be implemented first by scheme administrators to ensure an individual is placed in the correct scheme as on 31 March 2012 which will provide them with eligibility to the McCloud remedy for any remedial service.
- 6.12 Additionally, special provision has been made to allow firefighters who elect to purchase service under the Matthews remedy and who were not members of the 2015 Scheme on 1 April 2015, to have an entitlement to buy back their service in the 2015 Scheme from 1 April 2015 under a CD. This will provide them with the ability to include any service during the remedy period in the modified pension scheme when rollback has been implemented,
- 6.13 We are confident that both the McCloud/Sargeant remedy and the Matthews options exercise 2023 will work together to place individuals subject to both remedies in the correct position. All those who elect to purchase their service under the Matthews remedy which subsequently makes them eligible for the McCloud remedy will, where they had previously opted out of the 2015 scheme, could retrospectively purchase the period of service in the 2015 Scheme. Where this happens the period of remedial service will be rolled back into their legacy modified scheme.

Question 2 - DCU timing of RSS: Do you [think that] 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?

Summary of responses

- 6.14 27 responses were received, 6 agreed that the proposed approach is a suitable period to decide, and 20 disagreed. Others may have provided commentary without a clear 'yes or no' response. The summary below covers explanatory open text responses and points made during informal engagement with fire sector stakeholders.
- 6.15 Where open text was given, many responses focused on more general issues that either did not directly answer the question or raised individual personal circumstances. Again, issues raised included their dissatisfaction/disagreement with the reforms overall and how they did not find the drafting of the regulations easy to interpret, but also some more individual concerns around members who are due to retire imminently.
- 6.16 Some responses raised concerns about how member decisions would interact with the timings of RSS, especially with those who are entitled to make an immediate choice and those who retire imminently after 1 October 2023. It was suggested that transitional arrangements should be adopted for those individuals who are due to retire on or shortly after 1 October 2023 to ensure members can retire and receive legacy scheme benefits and have a subsequent option to choose reformed scheme benefits later.
- 6.17 Additionally, some responses suggested that a process that requires a firefighter to make their benefit decisions at least six months prior to their anticipated retirement may be too early and create administration issues, especially as pension benefits can change significantly in the short term due to final salary increases etc and many firefighters are only required to provide their employer with one month's notice of their retirement. It was suggested that the six-month period should be reduced three to four months or left to the discretion of the employer to accept decisions made closer to retirement.
- 6.18 Other responses raised concern about the administration challenge for employers to issue an RSS on request to deferred members. It was suggested that RSSs could be supplied automatically as part of the process of providing annual deferred pension statements which would reflect a similar process as that for active members.
- 6.19 Some respondents suggested that the requirement for an individual to make their deferred choice within 12 weeks of receiving their RSS may not provide sufficient time for an individual to make an informed decision. It was suggested that there should be a more flexible time limit for a member to make their decision or exclude any hard deadline altogether.

6.20 It was also suggested to have a time limit on revocation or a ‘cancellation deadline’ in the regulations to prevent decisions being revoked at the last minute when an administrator may already have processed the final retirement calculations and made the necessary arrangements for payment. It was suggested that ten working days would be reasonable.

Government response

6.21 On the general issues, as noted in the summary at paragraphs 5.6 to 5.9, concerns about pension reform and related issues, and the language used in drafting the regulations are not part of this consultation. Also, we address concerns about the language used in the regulations in paragraph 5.14. On the issues around individual projections and retirement plans, it is not possible for either the regulations or the consultation to provide personalised pension forecasts – that is an issue that only a member’s scheme administrator can resolve.

6.22 After considering the substantive responses to this element of the consultation and informal engagement, the government is content that the period that a member must request their final RSS in advance of making their choice should be set at 3 to 6 months in advance of retirement. It should be noted that a scheme manager can agree to a shorter period. On the suggestion not to set a time-period, if there is not one (other than “less than 12 months” as set by the PSPJOA) then every decision on timing would become a scheme manager discretion. The government considers that this would not provide sufficient certainty to scheme administrators or to members as to the process for making a choice of benefits.

6.23 The government has also agreed to introduce a deadline by which deferred choice elections can be revoked or changed. Any changes to elections will need to be made at least ten working days before the payment is due to be made. This will help avoid administration problems with last minute changes when payments have already been processed.

6.24 It is also the government’s view that employing fire and rescue authorities already have the flexibility if they want to provide deferred members with an annual RSS as part of the annual deferred pension statements. No specific legislative provision would be needed for this.

Question 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?

Summary of responses

6.25 26 responses were received to the closed question: 16 agreed that the proposed approach would not cause any adverse impact for members retired under ill health during the remedy period and 10 did not agree. Others may have provided commentary without a clear ‘yes or no’ response. The summary below covers

explanatory open text responses and points made during informal engagement with fire sector stakeholders.

- 6.26 Where open text was given, many responses focussed on more general issues that either did not directly answer the question or raised individual personal circumstances. Again, issues raised included their dissatisfaction/disagreement with the reforms overall, dissatisfaction with the timing of the remedy and how they did not find the drafting of the regulations easy to interpret overall. Some were also concerned that ill-health retirements would increase due to the normal pension age of the 2015 scheme being age 60.
- 6.27 Some responses raised concerns that only cases where an individual was eligible to make an immediate choice would be revisited for the purposes of ill-health. However, it was noted that where a member had been assessed for ill-health under their current scheme's regulations, had not met the eligibility criteria, and left employment, would have become a deferred member. These individuals would not be considered immediate choice individuals for the purposes of McCloud remedy, but their cases would need to be revisited for the purposes of reconsidering their ill-health pension entitlement.
- 6.28 Other responses suggested that in cases where it was determined that a member should have been entitled to an ill-health pension at the time of the original assessment, but their condition had improved then the member should be entitled to receive an ill-health pension for the period between the original decision and the decision on review.
- 6.29 Some responses also suggested that ill-health cases that are due to be revisited under the McCloud remedy should be dealt with in accordance with section 61 of the Equality Act 2010. The proposals in the consultation paper indicate that some of these cases may take time to conclude – this will deny them to the correct pension entitlement that they are entitled to receive now.
- 6.30 Some responses also raised concerns about a need for all ill-health cases to be referred to an Independent Qualified Medical Practitioner (IQMP) for an opinion. It was suggested that for many of the cases a simple paper exercise would suffice as it will be clear from the original IQMP's opinion whether the member would qualify for an ill-health pension under their alternative scheme. It was also suggested that the regulations should set out the specific cases that should be referred to an IQMP for a new medical opinion.
- 6.31 It was also highlighted that the reference in the draft regulations to a 5-year review was not applicable to the firefighters' pension schemes.

Government response

- 6.32 On the general issues, as noted in the summary at paragraphs 5.6 to 5.9, concerns about pension reform and related issues, and the language used in

drafting of the regulations are not part of this consultation. Also, we address concerns about the language used in the regulations in paragraph 5.14.

6.33 On the concerns about the normal pension age of the 2015 scheme (age 60) resulting in more members being ill-health retired, that is not directly to do with this remedy and, therefore, this consultation – the normal pension age of the 2015 scheme was set out in 2013 as part of the long-term reforms.

6.34 Suitable provisions have been made and the overall aim of the ill-health aspects of remedy is to ensure that those who have been ill-health retired (or dismissed on capability grounds without an ill-health pension – and become deferred members) during the remedy period (1 April 2015 to 31 March 2022 inclusive) can have the provisions of the alternative scheme applied to their case, particularly where the provisions in the two schemes do not line up neatly.

6.35 The policy position is that:

- Any members of the 1992, 2006 or 2015 firefighters' pension schemes who are eligible for the McCloud remedy and who were ill-health retired during the remedy period should be assessed for ill-health retirement under their alternative scheme. These individuals will have the option to make an IC to continue receiving the IHR benefits that they are currently receiving or to choose to take their ill-health benefits under their alternative scheme (if criteria are met) – this will be applied retrospectively to the member's date of ill-health retirement.
- Any members of the 1992, 2006 or 2015 firefighters' pension schemes who are eligible for the McCloud remedy and who were assessed for ill-health retirement but were dismissed on capability grounds with entitlement to a deferred pension (i.e., they did not satisfy the ill-health qualifying criteria) can be assessed for ill-health retirement under their alternative scheme. These individuals will not have qualified for ill-health retirement and will have the option to make an IC to choose to take their ill-health benefits under their alternative scheme if they satisfy the ill-health qualifying criteria for that scheme – this will be applied retrospectively to the member's date of ill-health retirement, or to retain their current entitlement to a deferred pension.

6.36 Except for the specific scenarios below, these cases will not require referral to an IQMP for a further opinion on whether they satisfy the ill-health qualifying criteria in the member's alternative scheme. Effectively, entitlement to ill-health retirement under the member's alternative scheme will be able to be determined by the relevant employing FRA using existing documentation/evidence.

6.37 The following cases will need to be referred to an IQMP:

- Fully protected 1992 Scheme members who have been ill-health retired on a lower tier ill-health pension and need to be assessed against the 2015 Scheme lower tier ill-health criteria

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

6.38 Any members of the 1992, 2006 or 2015 Fire Scheme who are eligible for McCloud remedy and who were assessed for ill-health retirement but continued in employment (i.e., they did not satisfy the IHR qualifying criteria) will not be assessed for ill-health retirement under their alternative scheme. These individuals will have been assessed and rejected for ill-health retirement during the remedy period but will have continued in employment as a firefighter after the point where the ill-health decision was made by the employer. By virtue of continuing in their employment as a firefighter they have demonstrated that they are not entitled to ill-health retirement under the alternative scheme. These cases should not be revisited.

6.39 Additionally paragraph 6.39 sets out the position in relation to any transitional 1992 Scheme members who:

- had transitioned into the 2015 Scheme during the remedy period,
- who then became subject to an ill-health retirement assessment prior to 1 April 2022, and whose ill-health assessment did not conclude until on or after 1 April 2022.

6.40 These individuals will have been assessed under the 2015 Scheme regs and will have been assessed against whether their permanent disablement continued to age 60, the Normal Pension Age. They will be given the option under McCloud remedy to have all their remediable service in the legacy 1992 Scheme. If they were to elect this option then they will need to be placed in the same position as those fully protected 1992 Scheme members who transitioned into the 2015 Scheme on 1 April, and who were subject to an ill-health retirement assessment prior to 1 April 2022, and who's ill-health retirement assessment did not conclude until on or after 1 April 2022.

6.41 These individuals will have been subject to the firefighters' ill-health 'underpin' that was introduced on 1 April 2022. These individuals were ill-health retired under the 2015 Scheme regs but will need to be assessed against a normal

pension age of 55 (the same as the 1992 Scheme), rather than age 60 (the 2015 Scheme's normal pension age).

6.42 After considering the responses to the consultation and informal engagement, the government is content that these proposed changes will achieve the policy intention.

Question 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?

Summary of responses

6.43 25 responses were received: 15 responded yes that the policy proposals in relation to scheme members with added pension puts all eligible members in the same position and 10 said no, it did not. Others may have provided commentary without a clear 'yes or no' response. The summary below covers explanatory open text responses and points made during informal engagement with fire sector stakeholders.

6.44 Where open text was given, many respondents focussed on more general issues that either did not directly answer the question or raised individual personal circumstances. Again, issues raised included their dissatisfaction/disagreement with the reforms overall, dissatisfaction with the timing of the remedy and how they did not find the drafting of the regulations easy to interpret.

6.45 There was also a degree of misunderstanding, as some respondents thought that those with remedy period added pension rights would be barred from making a contingent decision to purchase legacy scheme additional service – this is not the case. There were also some members who confused added pension with transfers.

6.46 A few responses suggested that firefighters who choose reformed scheme benefits for their remediable service should be allowed to retain the added pension that they had purchased and that this would be consistent with the approach taken with transfers-in to the reformed scheme. There was also a suggestion that the fact that an eligible member bought added pension in the reformed 2015 scheme should automatically qualify as sufficient evidence for a contingent decision that they would have bought added service in the legacy scheme.

6.47 Other responses also raised concerns about a lack of clarity on why the option to purchase 'added years' in the legacy scheme was not available to the beneficiaries of deceased members. There was also a lack of clarity as to why 'added pension' purchased in the reformed scheme could not automatically be converted to 'added years' in the member's legacy scheme. Responses also thought that the policy did not appear to have considered what the member had intended when they made the original election to purchase additional pension benefits in the reformed scheme.

- 6.48 Some responses also raised concern that the use of compensation refunds to make new purchases of ‘added pension’ in the reformed scheme may not provide the desired outcome for the member as the purchase of added years at an older age will be more expensive.
- 6.49 Some responses included the suggestion that the Scheme Actuary should provide general guidance and actuarial factors to avoid having separate consultations with employers for each individual case. Other responses sought clarity on whether the GAD calculator will automatically calculate the relevant tax and interest components of any compensation.
- 6.50 There was also a suggestion that the already established Added Pension Benefit arrangement in the legacy firefighters’ pension schemes could be used to convert contributions paid towards ‘added pension’ in the reformed scheme to legacy scheme benefits.

Government response

- 6.51 On the general issues, as noted in the summary at paragraphs 5.6 to 5.9, concerns about pension reform and related issues, and the language used in drafting of the regulations are not part of this consultation. Also, we address concerns about the language used in the regulations in paragraph 5.14. On the issues around individual projections and retirement plans, it is not possible for either the regulations or the consultation to provide personalised pension forecasts – that is an issue that only a member’s scheme administrator can resolve.
- 6.52 On the confusion about whether those with remedy period added pension would be allowed to make a contingent decision to purchase legacy scheme additional service, any eligible member who meets the legacy scheme criteria (as they would have applied for purchase of additional service during the remedy period) will be able to make a contingent decision to purchase additional service. It will also be open to eligible members who continue to be pension scheme members to buy added pension now.
- 6.53 Regarding the concerns about a lack of clarity on why the option to purchase ‘added years’ in the legacy scheme was not available to the beneficiaries of deceased members. This is a decision a member would make to plan for retirement and does not apply to any ancillary benefits. Conversion to added service cannot be offered as an automatic route as the criteria a member has to meet to be able to buy added service are stricter than those for added pension.
- 6.54 Conversion to legacy Additional Pension Benefits in the legacy firefighter pension schemes cannot be offered. This option was considered during policy development, but it would require a retrospective change to the policy intention of APBs which could create disparities of treatment with members who are not subject to McCloud remedy. APBs are at the discretion of the employer and can only be used for specific temporary allowances which are not pensionable under final salary

arrangements. Any retrospective change to this policy could raise additional discrimination risks. Additionally, Conversion to added service cannot be offered as an automatic route as the criteria a member has to meet to be able to buy added service are much stricter than those for added pension.

6.55 On allowing added pension contracts taken out during the remedy period to be resolved at retirement, the consequence of the remedy is that all eligible members are put back in their legacy schemes. Added service contracts started during the remedy period (whether at the time or retrospectively through a contingent decision) will still be under the legacy scheme but added pension contracts from that period cannot sit under the legacy scheme. Most members are likely to choose legacy scheme benefits for the remedy period and anyone who is still serving (and a member of the pension scheme) will have the option to purchase added pension in the 2015 scheme.

6.56 On the point about an eligible member who had bought added pension in the 2015 scheme automatically qualifying as having sufficient evidence for a contingent decision that they would have bought added service, that seems reasonable. However, this should be considered part of the administration process and the obligation to do this will not be provided by scheme regulations.

6.57 On offering conversion instead, to do other than offer a refund to all would lead to situations where some members qualify for additional benefits of one sort or another and other members (who would like to have had additional benefits) do not qualify. A key principle behind the remedy is that the aim is to put members back in the position that they would have been in. This, and the need to avoid further difference of treatment when implementing remedy, mean that alternative have had to consider alternative options carefully.

Constructing a new AP section of the legacy scheme for conversion of AP benefits:

6.58 The problem that would arise is that this would be a special arrangement that was not available to (protected) legacy scheme members when they were in the scheme. That would result in a new difference of treatment. The further option of allowing legacy scheme members to access a new AP section would be an improvement (at employer cost) to a very valuable closed scheme. That would be against the principles of reform set out in Hutton and would lead to questions about how the timing of any legacy member's election to purchase AP could be fairly determined (when compared to the 2015 scheme member). Allowing such a facility for retired members and those who can take benefits before age 55 would be likely to lead to unauthorised payment consequences as the facility for AP was not part of the scheme on the necessary dates in 2003, 2004 and 2006 for the purposes of the Finance Act 2004 and might well result in the scheme becoming non-tax compliant.

Conversion of AP to Additional Service (AY):

6.59 The rules governing AY for the legacy schemes limit the amount of service a member can buy and, in many cases, mean that a member cannot buy AY at all. To allow AP (in all cases) to be converted to legacy AY would effectively give unprotected members a way of accessing AY in circumstances where protected members would not have been allowed. Again, that would be a new difference of treatment. To open up AY purchases to any legacy member without limit would be a considerable uncosted improvement to a closed legacy scheme as the factors as they stand are on the basis of the current terms of the facility which, again would be against the Hutton reform principles. Moreover, any change to allow such a purchase would only come into existence from October 2023 it would be a way of allowing accrual in a legacy scheme beyond 1 April 2022, which is not allowed. There is a further complication with conversion as members might not be entitled to be credited with additional service in the legacy scheme for the (full) value of their AP if they are already close to maximum service under the legacy scheme.

Holding the AP 'on record' until DCU:

6.60 The comparison was drawn with the proposal for transfers. However, that situation allows for a record to be held in both cases (protected and unprotected members would have all been able to have a transfer in). For AP, it could only happen for unprotected members. Again, it would allow that cohort a way of accessing AP that protected members would not have – another difference of treatment issue.

Allow payments at retirement to re-instate the AP:

6.61 Allowing members who had had compensation (in respect of AP) to pay it back (even though interest would have to apply) would effectively be allowing a group of members with remediable service preferential access to AP. Again, a difference of treatment issue.

Overall conclusion on conversion

6.62 Our conclusion is that none of these alternatives can provide a conversion solution given the issues that arise. This means that the only option under the PSPJOA that is open to the firefighters' schemes is to offer compensation. The original election by the member to purchase added pension would effectively be made invalid. For members with AP arrangements that commenced during remediable service in the police and firefighters' schemes (i.e., those that started before April 2022), the "return of contributions" 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. Protected members without any reformed scheme service in the remedy period will not be entitled to this form of compensation (since they could not have made reformed scheme AP purchases in the remedy period). The original election by the member to purchase added pension would effectively be made invalid.

6.63 After considering the responses to the consultation, the government is content that the proposed changes will achieve the policy intention.

Question 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?

Summary of responses

6.64 26 responses were received: 18 responded yes that the proposed approach on 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 and 8 said no, it did not. Others may have provided commentary without a clear 'yes or no' response. The summary below covers explanatory open text responses and points made during informal engagement with fire sector stakeholders.

6.65 Where open text was given, many responses focussed on more general issues that either did not directly answer the question or raised individual personal circumstances. Again, issues raised included their dissatisfaction/disagreement with the reforms overall, dissatisfaction with the timing of the remedy and how they did not find the drafting of the regulations easy to interpret.

6.66 Some responses raised concerns about individuals who choose the 1992 scheme for the remedy period and a lack of clarity on how a transfer that is in the 2015 scheme to the 1992 scheme would be enabled.

6.67 One response questioned whether the proposal to pay an equivalent value to compensate members who would otherwise exceed a pensionable service cap, by adjusting their contributions, is compatible with s.91 of the Pensions Act 1995 or s.21 of the PSPJOA. It was suggested that excess should be converted to legacy scheme benefits (and the service cap disapplied) or, alternatively, retained as a 2015 Scheme entitlement.

6.68 Some responses also raised concerns that the draft regulations did not explain how compensation will be achieved and suggested that it would be helpful if the regulations referred to this and set out the general principles. Some responses referred to regulation 30(2)(b)(ii) and asked for clarity on how compensation will be achieved.

6.69 A few responses questioned the policy decision to exclude transfers into the reform scheme during the remedy period from the 'roll-back' stage. The policy will generate administrative complexities as administrators will need to ensure the value of the transfer is updated on the member's record until they make their choice.

- 6.70 Other responses also raised concerns about the lack of clarity on the process employers need to follow in cases where a member's transfer cannot be converted to legacy scheme service, particularly in relation to adjustment of contributions based on an actuarial calculation.
- 6.71 Other responses asked for an assurance that by delaying the adjustment until the members crystallisation date this will still be processed as a transfer from the 2015 scheme to the legacy scheme, meaning the member's service credit will not count towards the pension input amount in the legacy scheme in the year of retirement.
- 6.72 There were also concerns raised about the administrative complexities of this system, how interest will factor into the calculation, and were keen to have the actuarial guidance on how these calculations will work. They also asked about changes to the Public Sector Club Memorandum.
- 6.73 A few respondents asked when GAD guidance will be available to do any conversions for compensation. They also asked how transfers that were 'converted' and paid under immediate detriment.

Government response

- 6.74 On the general issues, as noted in the summary at paragraphs 5.6 to 5.9, concerns about pension reform and related issues, and the language used in drafting are not part of this consultation. Also, we address concerns about the language used in the regulations in paragraph 5.14.
- 6.75 Also, the PSPJOA treats a transfer differently to pension built up because of service in the remedy period. This, and the existing transfer rules in the pension schemes which can limit transfers in, are why it is preferable to wait until the point of making a decision on remedy to move the transfer rights.
- 6.76 The conversion to compensation provision does not mean that transfers are not preserved. The majority should be able convert their transfers into the alternative scheme. Conversion to compensation only arises for members who choose legacy scheme benefits, whose transfer cannot (in full or part) be converted to legacy scheme benefits and are also unable to have the transfer associated with post-April 2022 service as they left service before April 2022.
- 6.77 Converting the transfer to an added pension would introduce new difference of treatment (those who had transfers getting access to a facility that others could not have had access to at the time)
- 6.78 On the question about breaching existing HMRC regulations on transfers, an unauthorised charge may occur. If any unauthorised payments do arise as a result of this, they would be able to be compensated. HMRC confirmed that a transfer would not materially impact the outcome of the pension input amount calculation as

a transfer would be included in the opening and closing values of the calculations, just as it was when transferred initially.

6.79 On the administration and guidance issues, as noted in the summary above actuarial guidance will be available and it will cross-refer to the interest directions, so that element will be considered. On detail of how it will be administered (e.g., how the scheme manager will contact the member and when), that is a matter for scheme managers.

6.80 The policy on the Public Sector Club Memorandum is owned by Cabinet Office and does not form part of this consultation.

6.81 On the question about Immediate Detriment (ID) cases, the processing of these was always contingent on the whole ID case being able to be resolved. Therefore, ID cases with unresolved transfer issues are not expected.

6.82 After considering the responses to the consultation and informal engagement, the government is content that the proposed changes will achieve the policy intention.

Question 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?

Summary of responses

6.83 39 responses were received, 24 responded yes that the approach 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 and 3 said no, it did not. Others provided commentary without a clear ‘yes or no’ response. The summary below covers explanatory open text responses and points made during informal engagement with fire sector stakeholders.

6.84 Some respondents raised concerns about the ability of unmarried partners to have an entitlement to make decisions as the position of a ‘life partner’ (the term used in the consultation paper) has not been included in the draft regulations. They thought there is a potential ambiguity as to the precise definition of who will be a relevant ‘member representative’ in circumstances in which a firefighter died leaving a life partner with whom they were neither married nor in a civil partnership.

6.85 One respondent referred to eligible decision makers for deceased members, there is reference to M’s personal representative, yet this term does not appear to be included within the regulations.

6.86 Some respondents raised concerns about any uncertainty about the lawfulness of payments creates a financial risk to employers since eligible pension costs are reimbursed by government, and that there is a risk that reimbursement will fail if the government subsequently determines that payments have not been properly or lawfully made.

6.87 It was suggested that the provision that allows a scheme manager to put a survivor benefit into payment in advance of making an election (paragraph 9 of regulation 11), should be mandatory not permissive. It was also suggested that allowing a members deferred choice decision to lapse if they die before benefits are paid did not seem justified.

6.88 Respondents welcomed the policy of protecting children's pensions, and the waiving of liabilities for death cases where an overpayment has taken place.

Government response

6.89 The regulations provide protection against a child's pension being reduced in the case where a surviving adult who does not have parental responsibility for them is making the election.

6.90 On the member's choice lapsing if they die before it comes into payment, a member can revoke their election until close to the benefits coming into payment, so it would seem unfair not to allow a survivor the same option. What is also relevant here is that this situation would have to be a death in service close to retirement, so it will only happen in a minority of cases and therefore will not be such an administrative burden.

6.91 Making it mandatory for a survivor benefit to be put into payment where a member has died in service does not allow the beneficiary to decide that they would rather make their choice before the benefits are put into payment, with all the consequent unpicking that that might entail. This scenario will only arise in cases of deaths in service or (for deferred members) deaths before benefit crystallisation. It also gives the scheme manager discretion to be able to choose not to pay in complicated situations, for example where there is more than one adult with an interest in the benefits that could be payable.

6.92 On the point raised about unmarried partners having the ability to make decisions, where a member has died the person who can make an opted-out service elections, an immediate choice decision or a deferred choice decision is determined in accordance with the Schedule to the regulations. This provides for co-habiting, unmarried partners.

6.93 After considering the responses to the consultation, the government is content that the proposed changes will achieve the policy intention.

Question 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?

Summary of responses

- 6.94 26 responses were received, 17 responded yes that contingent decisions give members opportunities to revisit pension benefit decisions taken during the remedy period and 9 said no, it did not. Others provided commentary without a clear 'yes or no' response. The summary below covers explanatory open text responses and points made during informal engagement with fire sector stakeholders.
- 6.95 Where open text was given many responses focussed on more general issues that did not directly answer the question, such as their dissatisfaction/disagreement with the reforms overall and how they did not find the drafting of the regulations easy to interpret.
- 6.96 A few responses raised concern about the absence of clear guidance on how employers should manage the process of implementing contingent decisions across the fire service. There was also a perceived lack of clarity on what supporting evidence would be acceptable for a successful contingent decision application. This was thought to have the potential to lead to significant inconsistencies within the fire service.
- 6.97 Other responses also noted that the current contingent decisions policy did not cover the full range of pension/non pension/other financial losses that an individual may have suffered because of the discrimination, for example, the portion of annual pension commuted for a lump sum, timing of retirement, and paying contributions for unpaid leave etc. It was also suggested that any decision made that related to the discrimination should be reversible.
- 6.98 There was some concern about a lack of clarity with regards to the process of recovering employee contributions where an individual buys back a period of service which they had previously opted out. There was also concern about how this additional service should be treated for the purposes of pension accrual, interest, and taxation where the member repays the contributions by means of periodical contributions. For some, there was also a perceived lack of clarity on how employer contributions would be recovered.
- 6.99 The issue of auto-enrolment was also raised. Clarity was sought about circumstances where an individual was auto re-enrolled into the 2015 scheme within the remedy period and subsequently opted out and would make them eligible for an opted out contingent decision claim, and if so, whether they would then be able to re-instate all their service in that employment within the remedy period.

- 6.100 One response noted that draft regulation 28(3) appears to provide for employers to implement a screening process for contingent decision applications who wish to purchase added years in their legacy schemes. It was suggested a centrally agreed process would be useful to avoid inconsistent decision being made within the fire service.
- 6.101 Another response also noted that there did not appear to be any provisions that allowed an individual to revisit an earlier decision to transfer pension benefits into or out of the scheme during the remedy period and whether any time limits applied.
- 6.102 One response referred Part 3, regulation 5(5) of the draft provisions and asked for clarity on whether only one or both conditions needed to be satisfied for an application to be refused. There was also concern with regards to some of the date references which will need to be reconsidered.
- 6.103 Some responses were also keen that 2015 scheme members who had purchased added pension should be allowed to convert it to additional service in the relevant legacy scheme.
- 6.104 Some responses questioned how the additional accrual from reinstated service (rectified opt-outs) would be treated under the tax regime. Some responses were keen that it should not be treated as accrual in the current tax year, rather it should be smoothed and treated as accrued across the remedy period.

Government response

- 6.105 On the general issues, as noted in the summary at paragraphs 5.6 to 5.9, concerns about pension reform and related issues, and the language used in drafting are not part of this consultation. Also, we address concerns about the language used in the regulations in paragraph 5.14.
- 6.106 The risk with specifying what information qualifies as evidence for a contingent decision is that scheme managers would not be able to accept legitimate but unanticipated cases. It is not desirable to inadvertently prevent a member from qualifying just because they have very unusual circumstances. On the idea of self-certification, scheme managers must act within the parameters set out in the PSPJOA, HMT directions and the retrospective regulations, therefore it is important that they review the evidence provided by members to ensure that the contingent decision cases they accept – and the solutions proposed – are permitted by legislation.
- 6.107 On the issue of allowing those with added pension to convert it into additional service in the legacy scheme, this is not provided for as the rules governing eligibility for added pension are different from those for additional service. All

members with remediable service who have purchased added pension will be treated equally by being given compensation representing a 'refund.' Those who meet the additional service rules' criteria will have an opportunity to purchase additional service in the legacy scheme, in the same way as any other member with remediable service who meets the additional service rules' criteria. An automatic route for this purchase is not being implemented – this is to ensure that the scheme complies with the anti-recycling rules (essentially that don't permit lump sums to be directly converted into new pension).

- 6.108 How this and other issues will be communicated to members are issues of administration and therefore more appropriate for scheme managers to determine for themselves. The Home Office will continue to support scheme managers, and these points will be passed on to scheme managers and those who work more closely on administration.
- 6.109 On the issue of contingent decisions policy not covering the full range of financial losses relating to the discrimination, the remedy is intended to put scheme members back into the same financial position as if the discrimination had not occurred. This includes provisions to allow schemes to provide 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 over this would need to be taken up through the normal channels.
- 6.110 On the opt-out contingent decision, it is prudent to establish an additional route for eligible members to be able to make the necessary contributions. A periodical contribution arrangement over 14 years has been added, so that such members have another way to make the payments. On whether the period is appropriate, there are good administrative reasons to limit the period during which an application can be made – the PSPJOA 2022 envisages an election having to be made within a year of the first RSS being issued. However, the drafting has been altered so that the period is tied to the issue of the first RSS.
- 6.111 HMRC has confirmed that, for the purposes of Annual Allowance, the purchase by the member of previously opted out service is not dependent on the timing of the payment of employee contributions. The re-purchase of a member's service is retrospective, and the Annual Allowance position follows from this, i.e. Pension Input Amounts will fall into the relevant past tax years.
- 6.112 After considering the responses to the consultation and informal engagement, the government is content that the proposed changes will achieve the policy intention. This meets the aim of removing the discrimination and making sure that public service pensions are reformed appropriately.

Question 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?

Question 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?

Summary of responses to questions 8 & 9.

- 6.113 26 responses were received to question 8, 14 responded yes that there are other areas which 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 and 12 said no, it did not.
- 6.114 26 responses were received to question 9, 21 responded yes that there are additional points not covered in this consultation paper that need to be considered as part of the remediable service regulations and 5 said no, there are not. Others provided commentary without a clear 'yes or no' response. The summary below covers explanatory open text responses and points made during informal engagement with fire sector stakeholders.
- 6.115 Where open text was given in question 8, many respondents focussed on more general issues that either did not directly answer the question or raised individual personal circumstances. Again, issues raised included their dissatisfaction/disagreement with the reforms overall, dissatisfaction with the timing of the remedy and how they did not find the drafting of the regulations easy to interpret overall.
- 6.116 A few responses raised the issue of the 'contributions holiday' provision in the 1992 Firefighters' Pension Scheme was raised and that the draft regulations did not address how contributions made during this period would be treated for the purpose of McCloud remedy.
- 6.117 Other responses noted that employers can decide which scheme benefits to pay where an individual does not decide within the election period and suggested that central guidance will be required to ensure a consistent approach is adopted within the fire service.
- 6.118 Some responses also raised concern about a lack of clarity as to the circumstances when an employer can decide to waive liabilities owed by the member to the scheme. It was suggested that central guidance will be required to ensure that the decisions are made as intended and to ensure a consistent approach is adopted within the fire service. It was also suggested that the scheme should legislate for members to be required to commute a minimum of their annual

pension for a lump sum where they owe a liability to scheme which should be deducted from pension benefits.

- 6.119 Reference was made by some to the compensation provisions in the draft regulations and the need for central guidance setting out the process that employers need to follow to inform members of their rights and entitlement, especially with regards to contingent decisions and taxation. It was suggested that the regulations did not adequately set any framework for making compensation payments.
- 6.120 Some respondents referred to immediate detriment cases, noting that HM Treasury had indicated that further tax regulations may be introduced, depending on how these cases are addressed in scheme regulations. Whether these consequential tax regulations are required will be determined by HMRC once scheme regulations are confirmed by schemes. Responses noted it was not clear in the draft regulations whether this intention has been realised and no mention of the process by which the scheme manager must follow either and this could lead to further legal challenges.
- 6.121 Additionally, it was also noted that there is no reference in the draft regulations or the consultation document about the treatment contributions made by immediate detriment members with regards to tax and interest. It was suggested that draft regulations should set out how tax relief is to apply if it has not already been provided to the member as part of the immediate detriment remedy.
- 6.122 Other responses also highlighted that the draft legislation does not provide a framework for the creation and maintenance of a contribution adjustment record, or the points as to when a member can settle any liability owed. It was also unclear about how and when any future interest accrual will be calculated and whether this will need to be facilitated within the software system and additional information or guidance should be provided as a priority.
- 6.123 One response also suggested that there is uncertainty about the impact of interest rates changes after members have been issued with an RSS and before a member makes their election.
- 6.124 Some responses also noted that the consultation document was clear on the policy of abatement, but no specific provision was made for abatement in the draft regulations. Responses noted where an employer has an established policy not to abate a member's pension it was unclear whether interest should be applied to the liability owed to the scheme by the employer. Further clarification on this would be welcomed.
- 6.125 It was suggested that detailed guidance should be provided with respect of the numerous employer discretions within the draft regulations to include application of abatement, handling members who have not made elections, reasonable times

for deferred choice elections, contingent decisions, waiving overpayments, dealing with payments made under immediate detriment, and handling interest and indirect compensation.

- 6.126 A few responses also referred to the recovery of employee contributions, suggesting that there was also a role for recovery by means of periodic contributions. It was also highlighted that there was a lack of clarity with regards to recovery/refund of employer contributions following a member's decision.

Government response

- 6.127 On the general issues, as noted in the summary, this consultation is about the remedy rather than the reforms which happened in 2015. On the language in the regulations, pensions are a complex technical subject and while efforts have been made to ensure that the drafting is as straightforward as possible, some aspects of the remedy are necessarily complex. The regulations are not intended to be a member's guide in simple terms.

- 6.128 Employee contributions paid under the reformed scheme which wouldn't have been paid had the member been in the legacy scheme are subject to correction under sections 15 to 17 of the Act, this also covers the period where an individual becomes retrospectively entitled to a contributions holiday after being rolled back into their legacy 1992 Scheme. The same applies to employee contributions which were not paid in the legacy scheme and would have been paid in the reformed scheme (assuming someone in this position actually opts for reformed scheme benefits).

- 6.129 On the point about it being unfair for members to have to pay contributions to make up the difference between their actual remedy period contributions and what they should have paid for the scheme that they choose. It would be more unfair to members who had made the correct contributions at the time if another member were able to choose the same scheme as them but not pay the correct contributions. The adjustment of employer contributions because of implementing McCloud remedy will be achieved through future scheme valuations. Any outstanding employer contributions will create a notional deficit and will be reflect in future employer contribution rates.

- 6.130 We have made certain amendments for the contribution regime to the regulations, in particular linking the window of opportunity to pay by lump sum to the receipt of an RSS and putting in a dedicated pathway to allow members who elect to buy-back opted out service to make the necessary payments over 14 years. We note that the PSPJOA/RSS determinations already set out that scheme managers must hold information about any contribution adjustments.

- 6.131 On the concern about when a member can make payments for owed contributions, members will be able to repay at the point of receiving their first RSS,

at other points while still serving/not yet retired as well as when they retire or crystallise their benefits. This will include payments for contingent decisions to reverse an opt-out and, as noted in 6.128 above, there will be an additional option of periodical contributions for payments in respect of reversing opt-outs.

- 6.132 Scheme Managers have discretion to waive liabilities owed by a member to the scheme in certain circumstances. The application of this discretion will be undertaken in accordance with HM Treasury Directions. Whilst the Home Office does not own this policy, we are willing to work with the fire sector to create informal guidance for employers to consider.
- 6.133 On revisiting commutation decisions, the PSPJOA allows a member to choose alternative benefits to those in payment, so part of that is being able to alter commutation decisions.
- 6.134 Other issues were considered to be out of scope for one or two reasons. Either because they were suggestions for scheme managers, administrative process or guidance, other legislation or because the issue they referred to was not something that fell under the narrow definition of how the powers used in the regulations can be applied. Also, as the consultation was about regulations to deliver the remedy, it wouldn't be right to make wider changes that were not in the remit of this consultation.
- 6.135 With regards to the issue of abatement, the government is content that the policy intention will be achieved through existing powers. There is no need to directly legislate for abatement in the regulations as the PSPJOA already achieves the necessary position.
- 6.136 There are a number of areas where the Home Office is not responsible for the policy or legislation on, such as tax, compensation, data recording and GDPR requirements, and the application of interest, so it would not be appropriate for the Home Office alone to provide formal guidance on those areas. Guidance on HM Treasury directions and the PSPJOA is not something that is typically prescribed in scheme regulations, so is not part of the scope of this consultation.
- 6.137 On other suggestions which were already dealt with by the legislative framework, the compensation/contribution amounts have interest applied to them by HMT's interest directions. The HM Treasury directions set out that the interest rate typically applied by the courts (around 8% simple) would apply to all contribution compensation calculations up until the date 28 days after a remediable service statement is first issued; after that (if they choose to leave it in the scheme) it's NS&I Equivalent Savings Rate compounded. On sums owed by members, it's just NS&I Equivalent Savings Rate compounded. This is all provided for in HM Treasury Directions.

6.138 Fire sector employer representatives are aware of the current proposals and have the opportunity now to make the necessary preparations to internal processes in advance of these changes.

Question 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?

Summary of responses

- 6.139 20 responses were received, 7 responded yes that there are additional points in the proposed amendment not covered in this consultation paper that need to be considered as part of the scheme regulations and 13 said no, it did not. The summary below also covers points made during informal engagement with stakeholders. Others may have provided commentary without a clear 'yes or no' response. The summary below covers explanatory open text responses and also points made during informal engagement with fire sector stakeholders.
- 6.140 One response referred to the Public Service Pension Schemes (Rectification of unlawful discrimination) (Tax) Regulations 2023 which covers out of scope years for scheme pays tax charges. Concerns were raised that this will lead to inequalities between members who were protected (and therefore older) and those who moved into the 2015 scheme and who will only pay tax for some of the years. Concerns were also raised about interest application to those not paying a lump sum until retirement, younger scheme members will be more heavily affected.
- 6.141 One response referred to immediate detriment cases and argued that these need to be resolved immediately as they are currently suffering financial detriment. One response expressed concerns that no Equality Impact Assessment (EIA) was published alongside the consultation to consider equalities. There was an expectation that some of the proposals require objective justification to ensure that differences between members are not classed as discrimination and are looking forward to viewing the EIA as soon as possible.
- 6.142 Other responses maintained that the current immediate detriment provisions, as currently drafted, may give rise to claims of inequitable treatment from those who retired with an immediate detriment remedy in so far as that they are prevented from claiming tax relief and so treated less favourably than those who are retiring on and after 1 October 2023 (who are likely to be younger).
- 6.143 Some responses also raised concerns that several fundamental decisions are left to the discretion of the employer. This may lead to very different outcomes for members employed by different fire and rescue authorities. There was also some concern with different policy approaches between England and the devolved administrations. For example, the different approached to recovery of employee

contributions could also lead to different outcomes for members and may cause challenges if an individual transfer's cross-border.

- 6.144 The age retirement issue was also raised, where some members would be able to access their legacy scheme benefits before having access to their reformed scheme benefits.
- 6.145 Some responses indicated that the position of the scheme manager also being the employer has not been properly considered to avoid any conflict in decision making by the fire and rescue authority leading to potential unequal outcomes for members.

Government response

- 6.146 On the general issues, as noted in the summary, this consultation is about the remedy rather than the reforms which happened in 2015, the timing depends on all the provisions for remedy being available, and, whilst it's understandable that the language used in the regulations can be complex, they are not intended to be a member's guide in simple terms.
- 6.147 As noted in the consultation document the Home Office always intended to publish an Equality Impact Assessment (EIA) alongside this response to the consultation. The government can assure respondents that, as the PSED is an ongoing duty, equalities issues have been considered throughout the policy formulation process and will continue to be.
- 6.148 On scheme managers having discretion, this is a consequence of the complexity and variety of individual circumstances. Scheme Managers need to be able to consider individual cases when making certain decisions, rather than a blanket set of rules applying.
- 6.149 On the question of applying interest to any of the payments or compensation, this policy is not in the control of the Home Office, and it therefore cannot be commented on from an equalities point of view in this consultation. However, it may assist to note that an EIA was published alongside Treasury directions, which set out the equalities impact of the policies provided for in Treasury directions including on interest.
- 6.150 On the age retirement issue, while it is acknowledged that this issue is important to many of those who responded, the change that gave rise to it is not part of the changes that is being consulted on here nor does it arise as a result of Remedy. Having considered the issue carefully the conclusion is that changing the terms one or more of the pension schemes is not appropriate as every option leads to a difference of treatment.

- 6.151 On the issue of how AA tax will be applied (and in and out of scope tax years), the tax regime is out of scope of this consultation as it is governed by different legislation. This issue is dealt with by HMRC's tax regulations².
- 6.152 On the scheme manager also being the employer, this is the longstanding position for the firefighters' pension scheme and the powers being used do not allow for wholesale changes to the scheme's governance arrangements.
- 6.153 Firefighters' pensions are devolved and accordingly the McCloud remedy changes made by the Home Office will apply to affected firefighters working for fire and rescue authorities in England. We have made our counterparts in the Devolved Administrations aware of our proposals through normal engagement.
- 6.154 The government acknowledges the effect of the non-discrimination rule at section 61 of the Equality Act 2010. However, Section 61 does not provide any remedy for the consequences that arise out of this, particularly on tax. Schemes do not have the powers to deal with all consequential impacts.
- 6.155 The government acknowledges that section 61 of the Equality Act 2010 permits pension scheme regulations to be read as though discriminatory provisions do not apply, allowing members in this position to be treated as a member of their legacy scheme. However, Section 61 does not provide schemes with the powers to deal with all consequential impacts, particularly as they relate to tax. Instead, these powers will be delivered through a combination of the PSP&JO Act, Treasury Directions, Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023 and scheme regulations. This legislation, among other things, provides for any overpayment or underpayment of member contributions to be corrected, including amounts in relation to tax relief; ensures certain payments do not give rise to unauthorised payment charges; and ensures the appropriate level of income tax is charged on pension benefits and lump sum payments. Where necessary these provisions have retrospective effect to ensure that the position is as it should have been had the discriminatory treatment not occurred.
- 6.156 After considering the responses to the consultation and informal engagement, the government is content that the proposed changes do not have 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. The legislation will come into effect on 1

² The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023 (legislation.gov.uk)

The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) (No. 2) Regulations 2023 - GOV.UK (www.gov.uk)

October 2023. This meets the aim of removing the discrimination and making sure that public service pensions are reformed appropriately.

7. Impact Assessment and Equalities

Impact Assessment

Equalities

7.1 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

7.2 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

7.3 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.

7.4 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.” HM Treasury has also conducted [an equality impact assessment for their directions](#).

7.5 Stakeholder engagement and informal consultation have supported the Home Office in 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 fire 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 has produced an Equality Impact Assessment that is published alongside this response.

7.6 More information on the PSED can be found here:

<https://www.gov.uk/government/organisations/home-office/about/equality-and-diversity>

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 fire pension scheme members in the position they would have been in before the discrimination occurred. However, fire pension scheme members may consider that 2015 reformed scheme 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 a choice within a specified timeframe.
- 8.2 This retrospective remedy marks the final phase of removing the discrimination arising as a result of protections provided under the reformed schemes for older fire pension scheme members when introduced in 2015.
- 8.3 Fire sector employer representatives are aware of the current proposals and have the opportunity now to make the necessary preparations to internal processes in advance of these changes.
- 8.4 Fire 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. Information and Data Handling

9.1 The Home Office will process personal data in accordance with the applicable data protection legislation. More information on what data being collected, why and how it will be looked after can be found here: Privacy notice - GOV.UK (www.gov.uk)

9.2 This 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?

9.3 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 (Remediable Service) Regulations 2023 are published.

Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

Annex A – List of respondents

- Administrators of Hampshire Fire Pensions
- Actuaries for lawyers
- Avon Fire & Rescue Service
- Bedfordshire Fire & Rescue Service
- Fire Brigades Union
- Greater Manchester Combined Authority
- Hampshire and Isle of Wight Firefighters
- Hampshire County Council
- Heywood Pension Technologies
- Hertfordshire County Council
- Jane Hunt MP
- Leicester Leicestershire and Rutland
- Local Pension Partnership Administration
- London Fire Brigade
- Local Government Association
- North Yorkshire Fire & Rescue Service
- Police fire and crime commissioners
- Fire Scheme Advisory Board
- South Wales Fire & Rescue Authority
- South Yorkshire Fire & Rescue Service
- Surrey Fire & Rescue Authority
- Tyne and Wear Fire & Rescue Service
- Warwickshire Fire & Rescue Service
- XPS Pension Group
- Others include, retired and serving Firefighters

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; this rose to £80,000 from April 2023.
Firefighters' Pension Scheme 1992	The Pension Scheme for Firefighters', introduced in 1973 and closed to new entrants on 5 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 took up employment from 1 April 2012. Since 1 April 2022 it is the only pension scheme available to actively employed firefighters.
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 their future pension income in return for a lump sum at retirement.
Compound Interest	A method of applying interest in which the interest itself earns further interest.
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 without immediate access to payment of their pension 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 Deferred 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.
Ill Health Benefits	If you are medically unfit to continue in your role due to ill-health, 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.
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. Special eligibility provision has been provided for firefighters who were optants out on 31 March 2012 but who had an entitlement to be an active scheme member.
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 fire and rescue authorities are the Scheme Managers for the firefighters' pension schemes. Whilst authority is delegated to administrators, overall responsibility remains with the Scheme Manager.
Simple Interest	A method of applying interest in which interest is earned on the principal amount only.
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.
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This publication is available at <https://www.gov.uk/government/consultations/firefighters-pension-scheme-retrospective-remedy>

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