



Home Office

# Home Office Firefighters' Pensions (McCloud/ Sargeant Remedy) Prospective Changes Consultation Comms Key Messages & Frequently Asked Questions

## Key messages

- In April 2015, the government introduced reformed public service pension schemes and agreed to allow those within 10 years of retirement in the main unfunded schemes to remain in their existing pension schemes. These were termed transitional protections.
- The Court of Appeal found these protections to be discriminatory against younger members of the judicial and firefighters' pension schemes. The government has taken steps to remove the discrimination across all the impacted public service schemes.
- Following a public consultation on the approach to remove the discrimination, it was announced in February 2021 that affected members will receive a 'deferred choice' of which pension schemes benefits they would prefer to take at the point they retire.
- The deferred choice will apply across the majority of the main public service pension schemes. Where members are already receiving pensions, they will be given a choice as soon as practicable. This means members will be able to choose to receive legacy pension scheme benefits or benefits equivalent to those available under the reformed pension scheme for service between 2015 and 2022. Not all members are better off in the legacy schemes, so it is important that individual members can choose which scheme benefits they want to receive.
- It was also announced that, from 1 April 2022, all those who continue in service will do so as members of the reformed schemes, regardless of age. So all members will be treated equally in terms of which pension scheme they are a member of. For clarity, there is no 'new' scheme from 2022; everyone will become entitled to membership of the existing 2015 scheme.
- The remedy will be delivered in two phases, prospective and retrospective, delivered through primary legislation and secondary legislation.
- This consultation is focused on the prospective phase of the remedy.

### ***Primary legislation***

- The government introduced primary legislation - the Public Service Pensions & Judicial Offices Bill - on 19 July 2021 to provide for the above.

### ***Secondary legislation***

- In addition to primary legislation, secondary legislation is needed to amend the scheme specific regulations. This consultation only covers the amendments for prospective changes, i.e. closing down the legacy scheme and ensuring that all members are treated as members of the reformed scheme from 1 April 2022. This is the first phase of the remedy.
- The second phase of the remedy is the retrospective remedy, which will be the subject of further consultation separately. This second phase will move members back into the legacy scheme for the remedy period and allow a choice of benefits at retirement.
- Remedying the retrospective discrimination is particularly complex and further technical issues will be addressed in the consultation on scheme changes to enact this, in 2022.

## **Frequently asked questions (FAQs):**

The questions below are useful to include on pension scheme websites to provide more information to individuals should they wish to find out more about the Home Office consultation.

### **General**

#### **1. What is the Home Office announcing?**

- On Monday 8th November, the government began formal consultation on the Firefighters' Pension Scheme regulation amendments needed to enact the prospective/first phase of remedy, as announced in February 2021 following the government consultation on the policy. These changes are consequential to those in the Public Service Pensions & Judicial Offices Bill (PSPJO) currently in Parliament.
- The consultation will address the amendments to the pension scheme regulations needed to enact the first set of changes to remove discrimination identified in aspects of the 2015 reforms.
- This includes how the Home Office will ensure that all members of the Firefighters' Pension Schemes who continue in service will be members of the reformed scheme from 1 April 2022. This means closing the legacy schemes to future accrual from 31 March 2022, so that all members are treated equally for future service. This involves moving any remaining legacy scheme members - i.e. those who had received full transitional protections - into the reformed scheme from 1 April 2022.
- The consultation will run for 8 weeks and will close on Sunday 2 January 2022.
- There will be an additional consultation in 2022 to address the further changes needed to correct the discrimination, specifically on how the Home Office will implement provisions for the deferred choice underpin.

## 2. What is the main purpose of this consultation?

- Her Majesty's Treasury (HMT) held a public consultation on proposed approaches to remedy the discrimination identified by the Courts in the McCloud/Sargeant cases.
- Following the consultation, HM Treasury announced its approach and introduced the Public Service Pensions and Judicial Offices Bill (PSPJO) to Parliament.
- The Home Office (HO) now needs to introduce scheme level changes to enact that policy.
- This will be delivered in two phases, prospective and retrospective.
- The prospective phase is the focus of this consultation. Prospective remedy means that, from 1 April 2022, all those who continue in service will do so as members of the reformed schemes, regardless of age, so that all members will be treated equally in terms of which pension scheme they are a member of.
- The HO is now consulting on how this is enacted within the Firefighters' Pension Scheme regulations. This will ensure that from 1 April 2022 all active members of the Firefighters' Pension Scheme will be accruing future benefits in the same scheme, ensuring there is equal treatment going forward.

## 3. Why is the Home Office (HO) consulting separately following the HM Treasury (HMT) Public Service Pensions Schemes consultation in 2020? What is the point of consulting if you've already decided the policy?

- To remedy the discrimination identified by the Courts in the McCloud/Sargeant cases, HMT held a public consultation on how to remove the discrimination across all relevant public service pension schemes.
- To enact these changes, the HO is now required to carry out consultations on more detailed scheme-specific changes to prospective scheme regulations. This will focus on how the established remedy approach is implemented in the firefighters' scheme.

## 4. Who will be in scope of the consultation?

- All those who are not currently members of the 2015 scheme are impacted by the changes, as they will move to the reformed scheme for all future service on 1 April 2022. The policy was announced on 4 February 2021, following a public consultation, and this consultation is on the regulatory amendments needed to enact that change.
- Those affected/in scope of the consultation are scheme members who were serving on or before 31 March 2012 and still serving on or after 1 April 2015. This includes those members who are currently active, deferred or retired, and those with a qualifying break in service of less than 5 years. We also welcome views from the general public.
- The proposals in this consultation document will have no effect on those who opted out of the pension scheme, pension credit members, retired members, or survivors (including widows/widowers) of members of any Firefighters' Pension Scheme in England.

## **Post consultation**

### **5. What are the next steps following the consultation?**

- Following the end of the public consultation period, the Home Office (HO) will consider the responses to the consultation, publish a response as to how the first phase of the remedy is being enacted in the scheme level changes to the Firefighters' Pension Schemes and lay legislation in Parliament to amend the Public Service (Firefighters') Pensions Regulations.
- The HO will also continue work on phase two of the remedy (including making preparations to implement the 'deferred choice underpin'), ahead of consulting formally on those amendments to scheme regulations.

### **6. When will the prospective changes to schemes be implemented?**

- It is intended that legislation to move members to the reformed schemes will take effect on 1 April 2022.

### **7. When will the retrospective changes be implemented?**

- Legislation to implement the deferred choice underpin will also be needed, intended to take effect by 1 October 2023 at the latest. Prior to this, the Home Office will carry out a consultation on more detailed scheme-specific changes to retrospective scheme regulations in 2022.

### **8. Why can't members stay in the legacy schemes until retirement?**

- The 2015 reforms were not illegal. Whilst the courts found (in the McCloud and Sargeant litigation) that the transitional protection arrangements were discriminatory on the grounds of age, the 2015 reforms themselves are not.
- The reasons for the original reforms still stand - public service pensions should be affordable and sustainable, whilst also providing an appropriate pension to members. The reforms aimed to achieve this and are fairer to many lower and middle earners who may be better off under the new schemes.
- To address the discrimination identified by the courts, the government has set out that, when the 'remedy period' ends on 31 March 2022, anyone who remains in service will do so as a member of the reformed schemes (of which many are already members).

## **ILL-HEALTH RETIREMENT (IHR)**

### **9. What happens in relation to the assessment of ill-health retirement (IHR) cases that began before 1 April 2022 but do not conclude until after 1 April 2022?**

- Firefighting can be a dangerous and physically demanding profession, and it is not uncommon for firefighters to have to retire on the grounds of ill-health, for instance if they are seriously injured while on duty and no longer able to work. All pension schemes make provision to pay ill health pensions.

- As set out in the consultation document, the policy intent is to ensure that a protected member who applies for IHR before 31 March 2022, where the application is determined in their favour after that date, is treated no less favourably than if the application had been determined on that date.
- The approach to achieving this is as set out in the consultation document.

## **ADDED PENSION BENEFITS**

### **10. Will members be able to make arrangements for purchasing service in the legacy schemes by means of periodical contributions after 31 March 2022?**

- In the firefighters' legacy pension schemes, it is possible for members to purchase additional pensionable service, where they meet certain criteria. They do this by agreement with the scheme manager, and pay for it either as a lump sum or by way of periodical contributions over a period of years, until a set age typically normal pension age (NPA).
- All such existing agreements will remain in force after 31 March 2022. This is because they do not involve continuing to accrue legacy scheme benefits in relation to service after the closing date; rather, the scheme members concerned are paying in instalments for a previously agreed enhancement to their pre-transfer service. These arrangements are therefore unaffected by the Public Service Pensions and Judicial Offices Bill or by our draft regulations.
- It should be noted that members will only be permitted to "complete" existing arrangements entered into before 1 April 2022, subject to meeting any other relevant criteria (such as remaining in active service).
- Members will not be allowed to enter into arrangements to purchase additional service in the legacy schemes on or after 1 April 2022.