



PSP&JO Act Comms Briefing

For use by departments with press offices and members/employers

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Top lines

1. The Public Service Pensions and Judicial Offices Act 2022 (PSPJOA 2022) legislates for how the government will remove the discrimination identified by the courts in the way that the 2015 reforms were introduced for some members.
2. In addition, the Act reforms the pension arrangements and increases the mandatory retirement age for the judiciary and puts judicial pay and allowances on a firmer legal footing.
3. The main elements of the Act are:
 - Changes implemented across all the main public service pension schemes in response to the Court of Appeal judgment in the McCloud and Sargeant cases:
 - Eligible members of the main unfunded pension schemes have a choice of the benefits they wish to take for the “remedy period” of April 2015 to 31 March 2022.
 - From 1 April 2022, when the remedy period ends, all those in service in main unfunded schemes will be members of the reformed pension schemes, ensuring equal treatment from that point on.
 - Bespoke measures implement corresponding changes in the Judicial Pension Schemes and Local Government Pension Scheme to reflect their different arrangements.
 - Members of the judiciary are transferred into a further reformed pension scheme owing to the judges’ unique circumstances of appointment.
 - Ensures there are no reductions to member benefits as a result of the 2016 cost control valuations.
 - Raises the mandatory retirement age of judicial office holders from 70 to 75.
 - Places judicial pay protection and the power to set allowances on firmer legal footing thereby protecting judicial independence.
 - Establishes a new UK Asset Resolution (UKAR) Limited pension scheme.
4. These changes provide public service workers with greater certainty of their benefit entitlements. Going forwards, public servants will receive guaranteed pension benefits, but on a fairer basis, and in a way that ensures that they are affordable and sustainable into the future.
5. The changes to judicial pension arrangements acknowledge the unique constitutional position of the judiciary by updating their pension arrangements to reflect this. This, alongside changes to their judicial mandatory retirement age, will help to ensure our judiciary can continue to meet the demands of the justice system.

Immediate Detriment

1. What are you doing about immediate detriment / rectification cases? Why can't these be processed now the Bill has received Royal Assent?

- The government accepts that affected members of the reformed pension schemes who have retired since 1 April 2015 or will retire before the remedy has been implemented, have an entitlement to be treated as a member of their legacy scheme for the remedy period if they wish.
- However, giving effect to this entitlement before legislation is implemented creates complex issues, particularly where there are interactions with the tax system.
- The PSPJOA 2022, together with changes being made through tax regulations using powers in the Finance Act will ensure a consistent approach and mitigate the risk of adverse tax impacts for members once they are commenced through scheme regulations.
- These scheme regulations will be in place by October 2023 for all members and schemes may implement them earlier where it is possible to do so.

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

- Provisions for the deferred choice will be implemented by 1 October 2023 (or earlier where this is possible) for all active members who retire beyond this point. Schemes will also offer those who have already retired a choice of benefits for the remedy period as quickly as possible after scheme regulations are implemented.
- Some cases, for example in the fire and police schemes, may have been processed ahead of legislation. Where this is the case, they will need to be revisited.

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

- Where members retire before the deferred choice is implemented in their pension scheme, they will initially receive benefits from their current scheme.
- They will then be given a choice of benefits for the remedy period as quickly as possible after that and any increased entitlement will be backdated.

4. Does Royal Assent mean that all of the legislation to remedy McCloud is now in place?

- No. There are still detailed changes that need to be made to scheme regulations. These will be made using the powers in the PSPJOA 2022 and need to be in force by 1 October 2023 at the latest.
- There are also some situations where changes to pension rights due to the McCloud remedy produce disproportionate tax results that cannot be resolved through powers provided in the PSPJOA 2022.
- Therefore, the Government will also be making changes to tax legislation to ensure that the remedy can be implemented smoothly. The Government is intending to finalise these regulations by Autumn 2022 with a public consultation planned in Summer 2022.

5. Does the PSPJO Act remedy the discrimination identified by the Court of Appeal

- Together with changes being made through tax regulations using the powers in the Finance Act and scheme regulations made under the Act, the PSP&JO Act will provide a remedy for all those affected by the discrimination identified by the Court of Appeal.

- This remedy will apply equally to claimants in the employment tribunal and non-claimants and there is no need to make a claim to the employment tribunal to benefit from the changes.

Ceiling Breaches at 2016 valuations

6. Why did the Government pause the cost control element of the 2016 valuations?

- The cost control element of the 2016 valuations was not completed prior to the pause, as a result of the McCloud and Sargeant judgments.
- It was right to pause the mechanism at this time as the uncertainty arising from the McCloud and Sargeant judgments made it impossible for the Government to properly assess the value of member benefits at the 2016 valuation process.
- While provisional results prior to the pause showed that a number of schemes would breach their cost control floors, these were never finalised and did not take into account the increased value in members' benefits as a result of McCloud remedy.
- If the cost control mechanism had not been paused, schemes may have adjusted benefits based on incorrect assumptions about benefit entitlements. The Government Actuary agreed that the policy of pausing the mechanism was reasonable.

7. Why is it necessary for remedy costs to be allowed for at valuations at all?

- Schemes are required to complete valuations by statute.
- Given this requirement, it is appropriate that these are completed based on an accurate assessment of the value of schemes to members, which necessarily includes remedy.
- Failing to capture the value of remedy could mean that members' benefits are changed based on an incomplete and inaccurate assessment of the value of these pension schemes.
- This would represent an unacceptable risk to the taxpayer, would introduce volatility into the mechanism at future valuations, and would fundamentally undermine the stated purpose of the mechanism to fairly assess the value of schemes to members in a way that is consistent and transparent.

8. Will the 2016 valuations be impacted by any of the Government's planned reforms to the cost control mechanism?

- The 2016 valuations are not affected by the proposed reforms.
- These 2016 valuations have been completed in line with the original design of the cost control mechanism.
- The proposed reforms to the cost control mechanism follow the Government Actuary's review of the mechanism and a full government consultation process. The Government asked the Government Actuary to review the mechanism in 2018 following the provisional results of the 2016 valuation, which raised concerns that the mechanism was too volatile, and was failing to operate in line with the intention that it should only be triggered by "unpredictable and extraordinary" events.
- The 2016 valuation process had already begun before the review was commissioned. The 2016 process was paused due to the uncertainty which arose from the McCloud judgment, and the Government Actuary's review was also put on hold at this time. Once the Government announced that the 2016 process would resume, it also confirmed that the review would proceed. However, as it was not clear what the outcome of the review would be, it would not have been appropriate to take a decision on whether or how the mechanism should be reformed for the 2016 valuations.

- The reforms to the cost control mechanism will be implemented in time for the 2020 valuations.

9. Why has the Government decided to waive ceiling breaches?

- In September 2018, the Government announced it would commission the Government Actuary to undertake a review of the cost control mechanism amidst concerns it was not operating in line with its objectives. Specifically, there was concern about the stability of the mechanism, since breaches were only expected to be triggered by extraordinary, unpredictable events.
- The Government decided that it would be inappropriate to reduce member benefits based on a mechanism that may not be working as intended. However, any benefit increases due as a result of floor breaches will be delivered.
- The PSPJOA 2022 therefore contains a measure to ensure no member benefits will be cut as a result of the 2016 valuations.

10. What impact does the government's announcements on waiving ceiling breaches have on members?

- As a result of the decision to waive any ceiling breaches, no member will see a reduction in pension benefits at the 2016 valuations. However, any floor breaches will be honoured, and any benefit increases that are due will be delivered.
- HM Treasury published amending directions in October 2021 which will allow schemes to complete the cost control element of the 2016 valuations and specifies how this should be done. Outcomes for individual schemes will not be known until results have been finalised.

Cost Control Mechanism Reforms

11. Why are these reforms being made?

- The intention was for the mechanism to only be triggered by unforeseen and unpredictable events. In 2018, the Government Actuary was asked to review the mechanism after the provisional results at the 2016 valuations suggested the mechanism was too volatile and not operating in line with its objectives. The review commenced in 2020 and his final report was published in June 2021. It contained several recommendations on how to improve the mechanism.
- Following a full public consultation process, the Government confirmed in October 2021 that it would take forward three reforms to the mechanism in time for the next scheme valuations. All three reforms are recommendations by the Government Actuary. The reforms will make the mechanism more stable and ensure that it protects both scheme members and taxpayers.

12. Why is the Government introducing an economic check?

- In line with the Government Actuary's view, the Government does not believe that the cost control mechanism can protect taxpayers unless it considers more of the factors affecting the actual cost of providing a pension.
- The introduction of a symmetrical economic check will ensure that any breach of the mechanism would only be implemented if it would still have occurred had any changes in the long-term economic assumptions been considered.
- The economic check will operate symmetrically for the benefit of both members and taxpayers. Its main purpose is to ensure greater consistency between benefit changes and changes to the wider economic outlook. It ensures a higher bar for benefit cuts to occur if the country's long-term economic outlook improves. But it equally applies to benefit increases if the long-term economic outlook worsens.
- It will operate in a transparent way and be linked to an objective and independent measure of expected long-term earnings and GDP from the OBR.

13. Is it right for the CCM to be linked to SCAPE / long-term GDP despite previous statements to the contrary?

- All three reforms were recommendations made by the Government Actuary in his independent review of the mechanism. They were also the subject of a full and open consultation process.
- The Government recognises that when the mechanism was set up, the intention was that changes in expected long-term GDP growth, would be excluded and would not impact on member benefits.
- However, in line with the Government Actuary's view that the mechanism cannot sufficiently protect the taxpayer without considering more factors that affect the actual cost of providing a pension, the Government believes it is now justified and appropriate to introduce the impact of changes in expected long-term GDP growth to the mechanism, albeit in a limited way, through the economic check. The effect that changes in long-term economic assumptions can have on the mechanism will be limited because they cannot cause or contribute to a breach, but only prevent or offset one.

- The economic check is symmetrical, and so protects both scheme members and taxpayers. The Government believes that the economic check will improve the operation of the mechanism and help make public service pensions schemes more sustainable in the future.

14. Will the economic check be objective?

- The economic check will be linked to the OBR's independent and objective measure of expected long-term GDP growth and the long-term earnings assumption. It will operate purely mechanically, with no scope for interference from individuals or groups, either from within the Government, or outside.

15. Why is the Government planning to move to a reformed scheme only design for the cost control mechanism?

- By moving to a reformed scheme only design, legacy scheme costs will be excluded from the mechanism, and only costs relating to past and future service in the reformed schemes will be considered.
- A reformed scheme only design will ensure consistency between the set of benefits being assessed and the set of benefits potentially being adjusted. It will also increase the stability of the mechanism and reduce intergenerational unfairness. Whilst this transfers the risks associated with legacy scheme costs to the Exchequer, the Government believes this is the right approach to take in order to reduce intergenerational unfairness and ensure the mechanism is fairer to younger members who did not previously have access, or had access for a shorter time, to the legacy schemes.

16. Why widen the corridor?

- Widening the cost corridor to +/-3% of pensionable pay will ensure a more stable mechanism, meaning it is more likely that breaches occur only in unforeseen and unpredictable circumstances, as was intended when the mechanism was originally established. This will also provide greater certainty to members regarding their projected benefits and future contribution rates.

17. Will a wider corridor lead to larger benefit changes?

- A wider corridor does not mean that different action would need to be taken if a breach beyond 3% were observed. For example, a breach of 4% would still require the same changes in benefits under either a 2% or 3% corridor, because after a breach the aim is to return costs back to target.
- However, a 3% corridor will mean that cost changes between 2 and 3% will not trigger a breach and require rectification, which could lead to a larger than otherwise breach occurring at subsequent valuations. The Government considers that, although this risk exists, a wider corridor is necessary to ensure a more stable mechanism and limit the frequency of member benefit and contributions changes.
- Furthermore, if a scheme shows cost changes between 2-3% at one valuation, then that does not automatically mean costs would either stay at that level or move further in the same direction at subsequent valuations and therefore result in a breach that would be larger than under a smaller corridor. It is perfectly possible that a scheme may see an increase in costs at one valuation, and then a reduction in costs at the next.

18. Are the changes being made fair on members?

- The Government believes that by creating a more stable mechanism, which limits intergenerational unfairness, and which remains symmetrical, these reforms benefit both members and taxpayers.
- The Government's reforms will make benefit cuts and increases less likely, in line with the mechanism's original objective of stability and the intention to protect both member benefits and the taxpayer. A more stable mechanism should provide greater certainty to scheme members regarding their future benefits.

19. Would you be reforming the mechanism if there hadn't been floor breaches at the 2016 valuations?

- The 2016 valuations were the first time the mechanism was tested, and the provisional results suggested there would be breaches across the board. As a result, the Government was concerned this indicated the mechanism was not operating as intended and was too volatile.
- For this reason, the Government commissioned the Government Actuary to carry out a review of the mechanism to assess whether it was too volatile and if it was operating in line with its objectives.
- The Government Actuary's final report was published in June 2021. The Government considered the final report and concluded that changes were necessary to ensure the mechanism operates more in line with its objectives, and then put these changes to consultation.
- All the Government's reforms proposed in the consultation were recommendations made by the Government Actuary.

20. Why are the reforms being implemented for the 2020 valuations onwards, and not being applied to 2016 valuations?

- The Government aims to implement these reforms to the cost control mechanism in time for the 2020 valuations. It would not have been possible or appropriate to implement these reforms, including the reformed scheme only design, in time for the 2016 valuations.
- These reforms follow the Government Actuary's review of the mechanism and a full government consultation process. The Government asked the Government Actuary to review the mechanism in 2018 following the provisional results of the 2016 valuations, which showed that all schemes might breach the floor. This led to concerns the mechanism was too volatile, and not operating in line with the intention that it should only be triggered by "unpredictable and extraordinary" events.
- The 2016 valuation process had already begun before the review was commissioned. The 2016 process was paused due to the uncertainty which arose from the McCloud judgment, and the Government Actuary's review was also put on hold at this time. Once the Government announced that the 2016 process would resume, it also confirmed that the review would proceed. However, as it was not clear what the outcome of the review would be, it would not have been appropriate to take a decision on whether or how the mechanism should be reformed for the 2016 valuations.

Tax

21. How will the McCloud remedy affect my tax position?

- Most members will see no changes to their tax position as a result of the remedy or will receive a refund as a result of the remedy.
- In the instances where your tax liability does increase, in the vast majority of cases this will reflect an increase in value of your pension benefits.

22. Will public sector workers have to pay additional taxes as part of the remedy? If so, how big will their tax bill be?

- Most members will see no changes to their tax position as a result of the remedy or will receive a refund as a result of the remedy.
- In the instances where a member's tax liability does increase, in the vast majority of cases this will reflect an increase in value of their pension benefits.

23. How many individuals will need to pay extra tax?

- Given that the remedy relies largely on a member's choice, which will differ depending on their circumstances, it is not possible to give a meaningful estimate of the number of tax corrections needed as a result of the remedy.
- However, the majority of members will see no changes to their tax position or will receive a refund as a result of the remedy.
- In the instances where a member's tax liability does increase, in the vast majority of cases this will reflect an increase in value of their pension benefits.

24. What changes are being made for tax?

- The tax system will in most instances work in the usual way and follow the new pension rights accrued from the remedy taking effect. There are some situations where changes to pension rights due to the McCloud remedy produce disproportionate tax results that cannot be resolved through powers provided in the PSPJOA 2022.
- Therefore, the Government will be making changes to tax legislation, using provisions contained in the Finance Act that received Royal Assent on 24 February 2022, to ensure that the remedy can be implemented smoothly.
- The Government is intending to finalise these regulations by Autumn 2022 with a public consultation planned in Summer 2022.

25. Why are you making people pay tax on their legacy pension benefits when they might ultimately choose new scheme benefits?

- When individuals are moved back into their legacy schemes, they will be legally entitled to receive legacy benefits for remedy period years – and that needs to be reflected in their tax treatment.
- In the majority of cases this is likely to result in a refund of overpaid tax and/or compensation, rather than additional tax being due. If an active or deferred (someone who is no longer building up entitlement) member then chooses new scheme benefits when they retire, those benefits will be adjusted at that point – not with retrospective effect.

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

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

- Where possible, the government and schemes will take proportionate steps to minimise the administrative burden on members. Ultimately decisions made by members will be individual choices.
- There will also be further guidance to complement existing HMRC guidance and schemes’ processes which are already in place to help individuals with their tax affairs.
- Schemes will also be able to provide compensation where a member has incurred reasonable additional costs as a result of an agent, i.e. where receipts or invoices can be provided by a tax adviser or accountant, who helped to resubmit information to HMRC.

27. Will the remedy require individuals to undertake extensive paperwork to ensure they receive appropriate compensation, even though this is the government’s mistake?

- In practice, most individuals will not have to correct their position, either through the tax system or by claiming compensation.
- For those that do, the government has worked hard to remove additional burdens that arise from addressing the discrimination.
- Where possible, the government and schemes will take proportionate steps to minimise the administrative burden on members, but it will not be possible to completely remove individuals from this process in all cases.
- If as a result of the remedy an individual has less tax to pay, they will be able to claim a repayment of overpaid tax from HMRC.
- The Act allows them to claim compensation if they are unable to get a repayment through the tax system.
- The government acknowledges the need to provide clear and accurate information to members going through this process to enable them to take the required actions. There will be material to support individuals through this process, guidance and calculators. Schemes will also be able to provide compensation where a member has incurred reasonable additional costs as a result of an agent, i.e. a tax adviser or accountant, having to resubmit information to HMRC.

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

- This is a unique set of circumstances that the government is addressing.
- The legislation and scheme rules covering public service pensions were not created with a view to making retrospective pension provision. So the changes made by the PSPJOA 2022 and other legislation are not straightforward but, as far as individuals are concerned, the complex changes are being made ‘under the bonnet’.

- Individuals will have a choice to make, and they will have the necessary information available to them when they come to do so. The majority will be provided with a simple choice between two options.
- However, for some, correcting individuals' pension positions over past years and getting it right, plus getting their tax liability correct, is not straightforward. The government acknowledges the need to provide clear and accurate communication and information to members going through this process. There will also be further guidance to complement existing HMRC guidance and schemes' processes which are already in place to help individuals with their tax affairs.
- Schemes will be able to provide compensation where a member has incurred reasonable additional costs as a result of an agent, i.e. a tax adviser or accountant, having to resubmit information to HMRC.

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

- The PSPJOA 2022 contains the core remedy, as well as the bespoke remedy measures for the Judicial Pension Scheme and Local Government Pension Scheme and was published on 20 July 2021. It sets out what the core remedy will mean for member's contributions, benefits, pension payments and compensation.
- Some elements of the Act concerning contributions, timing of changes to pension rights, and deeming provisions regarding which schemes are making or receiving payments, have been included to ensure proportionate and reasonable tax outcomes, in line with policy set out in the consultation and published response document.
- The tax system will in most instances work in the usual way and follow the new pension rights accrued from the remedy taking effect.
- There are some situations where changes to pension rights due to the McCloud remedy produce disproportionate tax results that cannot be resolved through powers provided in the PSPJOA 2022. Therefore, the Government will be making changes to tax legislation, using provisions contained in the Finance Act that received Royal Assent on 24 February 2022, to ensure that the remedy can be implemented smoothly. The Government is intending to finalise these regulations by Autumn 2022 with a public consultation planned in Summer 2022.

30. When will the tax regulations be ready?

- Further tax legislation will be required to cover some situations where changes to pension rights due to the McCloud remedy produce disproportionate tax results that cannot be resolved through powers provided in the PSPJOA 2022.
- This will be delivered using provisions contained in the Finance Act that received Royal Assent on 24 February 2022. The Government is intending to finalise these regulations by Autumn 2022 with a public consultation planned in Summer 2022.

Treasury Directions

31. Why is so much of the retrospective remedy done in Treasury Directions?

- Treasury directions are intended to set out to schemes how they should exercise a particular power, rather than creating a new power.
- They ensure that, where Treasury ministers (or in relation to Northern Ireland the Department of Finance), who are responsible for policy on public service pensions, consider that a consistent approach is necessary or desirable, the Treasury (or Department of Finance) may give directions to schemes, as other departments are responsible for preparing and laying scheme regulations.
- This allows schemes to make regulations that work best for them, while ensuring that where a particular outcome is desirable, it is achieved.
- This is in line with the normal use of Treasury and Department of Finance directions in this way, for example directions in relation to scheme valuations, or for increasing public service pensioners' Guaranteed Minimum Pensions when they would not otherwise be increased

32. Treasury directions should be subject to Parliamentary approval.

- Treasury directions are already often given to public bodies on technical matters such as their financial and accounting procedures – this is a consistent approach.
- The Act is broadly being handled in the same way as pensions legislation has been dealt with in the past.
- Treasury directions are just one part of the process. Much of the detail will be set out in the secondary legislation and will be subject to the usual parliamentary processes.

33. When will Treasury directions be made public?

- Treasury directions will be made public in advance of schemes making their retrospective regulations.

34. Will Treasury directions be subject to consultation?

- There are no specific requirements in legislation for any formal, public consultation on the Treasury Directions which will set out how schemes should implement elements of the retrospective remedy (i.e. those in Chapters 1,2 and 3 of the PSPJO Act).
- The policy content of these Directions will be settled ahead of the public consultations schemes will undertake on their retrospective regulations. These consultations will therefore be the main mechanism for providing feedback on the detail of how the retrospective remedy will be implemented, which can then be considered before the Treasury Directions and retrospective scheme regulations are made.

Timeline

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

- The government has introduced primary legislation through the Public Service Pensions & Judicial Offices Act to implement a deferred choice underpin within schemes. All eligible members will be treated equally and will be able to choose to receive pension scheme benefits from either scheme. Where necessary, payments will be backdated to 2015.
- Provisions for the deferred choice will be implemented by 1 October 2023 for all members. Once regulations have been laid, schemes are able to implement provisions for deferred choice earlier than October 2023 where it is possible to do so.
- Schemes have carried out consultations on more detailed scheme-specific changes to prospective regulations and will carry out consultations on retrospective scheme regulations.
- Where the changes legislated for through the Act produce disproportionate tax results that cannot be resolved through powers provided in the PSPJOA 2022, further changes will be made in the tax and scheme regulations.

36. What are the next steps now the legislation has received Royal Assent?

- The government intends that the provisions for the deferred choice underpin will be implemented by 1 October 2023, or earlier where schemes are able to make scheme regulations and processes ahead of that date.

37. What detail will scheme regulations contain?

- Scheme regulations to move members to the reformed scheme from 1 April 2022 have been recently consulted on, and [were made and laid in March]. These ensure members are placed on an equal footing from this point onwards.
- Additional scheme regulations will be drafted and consulted on over the next 18 months. These regulations will be used for the various purposes listed throughout the Act, including the process by which a member can make a choice or “election” to receive new scheme benefits, for interest to be paid to a member or scheme on any amounts owed to or by the scheme, to make provision for pension credit members, to make provision for members to receive remediable service statements, to provide for members who have made additional voluntary contributions and for members who have already benefited from an immediate detriment remedy.
- Where it is particularly important that scheme regulations are consistent, the Act will require them to be made in line with Treasury Directions. The powers to make scheme regulations are explained in the Delegated Powers Memorandum prepared by HM Treasury for the Delegated Powers and Regulatory Reform Committee.