



Department of

Finance

An Roinn

Airgeadais

www.finance-ni.gov.uk

Public service pension schemes: changes to the transitional arrangements to the 2015 schemes

Consultation

19 August 2020



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Executive summary

Removing discrimination arising from transitional protection

Public service pension schemes in Northern Ireland were reformed in April 2015 in line with reforms made to the schemes in the rest of the United Kingdom at that time. The cost of the legacy schemes had significantly increased over the previous decades, with most of those costs falling to the taxpayer. The introduction of new schemes, with career average design and increased Normal Pension Ages and the introduction of a cost control mechanism, were important steps to protect against unsustainable increases in cost. They were also progressive, providing greater benefits to some lower paid workers. Even with these reforms, public service pensions continue to be among the very best available, rewarding those who dedicate their working lives to public service.

As part of the 2015 reforms, those within 10 years of retirement remained in their legacy pension schemes. This transitional protection was provided following consultation with member representatives and was intended to protect and provide certainty for people who were close to retirement. Following legal cases taken by some members of the firefighters' and judicial schemes in Great Britain (the McCloud/Sargeant cases) in December 2018 the Court of Appeal found that this part of the reforms unlawfully discriminated against younger members of those schemes as transitional protection was only offered to older scheme members¹. The Courts require that this unlawful discrimination be remedied.

Rulings of the Court of Appeal in England and Wales are not directly binding here. However the devolved public service schemes in Northern Ireland incorporate the same transitional protection arrangements as the schemes in Great Britain. Legal advice confirms the implications of the Appeal Court decision are such that all schemes must be treated as affected by the 'McCloud/Sargeant' decisions and so require to be remedied.

This consultation sets out proposals to remedy discrimination in the main unfunded schemes made under the Public Service Pensions (Northern Ireland) Act 2014. The remedy will apply to all members who were in service on or before 31 March 2012 and still serving on or after 1 April 2015, including those with a qualifying break in service of less than 5 years. This is irrespective of whether they have submitted a legal claim or not, or whether they are currently an active, deferred or pensioner member. Due to their particular circumstances the schemes for Local Government workers and the Devolved Judiciary are not within scope of this consultation. (This is explained further at paras 1.24-1.25).

¹ The Court also made findings as to equal pay and indirect race discrimination.

Depending on a person's circumstances, many scheme members are likely to be better off in the reformed schemes rather than the legacy schemes. It is not fair to simply move everyone back into the legacy schemes, even though this would be sufficient to remove the unlawful discrimination identified by the Courts. It is therefore proposed to provide members with the option to choose between receiving legacy or reformed scheme benefits in respect of their service during the period between 1 April 2015 and 31 March 2022. This is generally referred to as the 'remedy period'. This consultation seeks views on that proposal and especially on which of two possible approaches should be taken to make this choice. The two possible approaches are:

1. an immediate choice.
2. a deferred choice underpin (DCU.)

Both approaches would give members a choice whether to receive benefits from the legacy or reformed pension schemes in respect of their service during the period between 1 April 2015 and 31 March 2022. However they differ in the point in time at which the decision is made by the member.

Under the immediate choice option, members would make this decision in the year or two after the point of implementation in 2022. For many members, this will be some years prior to retirement, and at a time when there is still some uncertainty over the precise benefits that would accrue to them in the alternative schemes.

In contrast, under DCU, this decision would be deferred until the point at which a member retires (or when they take their pension benefits). Until that deferred choice is made, all members would be deemed to have accrued benefits in the legacy scheme, rather than the reformed scheme, for the remedy period.

Under either approach, those 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.

Both of these approaches would remove the discrimination that the Courts have identified. They have both been proposed in technical discussions that have been conducted with scheme administrators and employer and member representatives. These have been helpful in identifying the relative advantages and disadvantages of each approach. There are 'pros and cons' to each option, with different impacts on different members. As set out in this consultation there might, in some cases, be a need to adjust benefit payments contributions and tax assessments with retrospective effect.

It is important to emphasise that all members will ultimately be treated as if they had belonged either to the relevant legacy scheme, or to the relevant reformed scheme, throughout the period between 1 April 2015 and 31 March 2022. There will be no obligation or entitlement to receive benefits or pay contributions associated with one scheme in some respects, but with the other scheme in other respects. Nor will there be any provision for a 'tapered' system under which some members might be entitled or required to treat part of that period as service in one scheme, and part of it as service in another.

This consultation seeks to explore the differing impacts, potential mitigations, and other relevant issues for each option. Views are invited on the viability and desirability of both approaches.

Future pension provision

The options proposed to address the discrimination will enable members to choose between the legacy and reformed scheme benefits for the period between 1 April 2015 and 31 March 2022. The consultation also seeks views on the provision for public sector pension benefits after 31 March 2022.

The total annual cost of paying out pension benefits in the NI unfunded public service pension scheme stood at £1.3 billion in 2018-19. Most of this cost is met by taxpayers. It is important that these costs are kept under control, to ensure the schemes are affordable and sustainable for the long-term. The introduction of the reformed schemes, with career average design and increased Normal Pension Ages, were important steps to protect against unsustainable increases in costs. The reformed schemes remain amongst the most generous schemes available in the UK. It is proposed that all active scheme members will be placed in these pension schemes in respect of employment from 1 April 2022 onwards.

Chapter 1

Introduction

Public service pension reform

- 1.1 The Public Service Pensions Act (Northern Ireland) 2014 (the Act)¹ gave legislative effect to the public service pension reform policy agreed by the NI Executive on 8th March 2012 to:
- commit to the policy for a new career average revalued earnings (CARE) scheme model with pension age linked to state pension age to be adopted for general use in the public service schemes; and,
 - adopt this approach consistently for each of the different public sector pension schemes in line with their equivalent scheme in Great Britain and not to adopt different approaches for Northern Ireland.
- 1.2 The main provisions in the Act are based on recommendations made by the Independent Public Service Pension Commission chaired by Lord Hutton of Furness. Lord Hutton's Commission reported in October 2010 that the (then) current public service pension structure would require major reform to adequately respond to a rising pension cost to employers and taxpayers associated with increased longevity in recent decades. In its final report in March 2011 the Hutton Commission recommended the replacement of final salary schemes with CARE schemes with normal pension age linked to State Pension Age, (SPA). The view of the Commission was that these reforms would make schemes more sustainable and fairer across their membership and for the taxpayer².
- 1.3 The Act sets out the public service employments for which new reformed schemes apply. These are:
- Civil servants;
 - Holders of judicial office;
 - Local Government workers;
 - Teachers;

¹ <https://www.legislation.gov.uk/ni/2014/2/contents>

² Final Report:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/207720/hutton_final_10031.pdf

Interim Report: https://webarchive.nationalarchives.gov.uk/20130102175838/http://www.hm-treasury.gov.uk/d/hutton_pensionsinterim_071010.pdf

- Health service workers;
- Fire and rescue workers; and,
- Members of the police service.

1.4 The reformed schemes introduced from April 2015 remain among the most generous available in the UK, and an important part of the remuneration of public service workers. Public service pension provision compares favourably with pension provision in the private sector, with typical employer pension contributions rates significantly higher in public service schemes than in private sector schemes.

Transitional arrangements litigation

1.5 The reformed schemes included an arrangement to exempt older members from the pension scheme changes. In most schemes this meant that members within 10 years of Normal Pension Age¹ stayed in their existing schemes (known as “transitional protection”) and members between 10 and 13.5 or 14 years of Normal Pension Age could stay in their existing schemes for a period ranging from a few months to several years after 2015 (known as “tapered protection”²).

1.6 In England and Wales, several judges and firefighters made claims (known as the McCloud and Sargeant cases³) in Employment Tribunals on the grounds that the transitional protection offered to older members constituted unjustified direct age discrimination and indirect race and sex discrimination. In particular, they argued that younger members were treated less favourably than older members who were given transitional protection. The Court of Appeal ruled in December 2018 that transitional protection in the judges’ and firefighters’ pension schemes gave rise to unlawful discrimination.

1.7 The Westminster government sought permission to appeal to the Supreme Court. This application was refused on 27 June 2019. In a written ministerial statement on 15 July 2019, the government confirmed that it accepted that the Court of Appeal’s judgment had implications for other schemes that had provided transitional protection arrangements for older members.

1.8 The judges’ and firefighters’ cases have been remitted to the Employment Tribunals to determine a remedy for claimants. Cases involving other schemes have also been brought. In a number of Employment Tribunal cases declarations have been made that claimants should be entitled to membership of the appropriate legacy scheme.

¹ For police and firefighters schemes legacy schemes actual NPA will vary in legacy schemes in circumstances specified in scheme rules. NPA references in this document should be read in that context.

² All schemes have tapered protection except the Local Government Pension Scheme (NI) (which is outside of the scope of this consultation, apart from the issue of transfer between the LGPS(NI) and the other schemes (see paragraph A.57 below)). Tapered protection was usually for members who were from 10 to 13.5 years of their NPA on 1 April 2012.. In police and firefighters schemes the eligibility period for tapered protection was between 10 and 14 years.

³ Lord Chancellor and another v McCloud and others, Secretary of State for the Home Department v Sargeant and others [2018] EWCA Civ 2844

Impacts for NI schemes

- 1.9 Responsibility for pension arrangements for public service employees in Northern Ireland is devolved. However, the main provisions of Northern Ireland schemes are practically identical to the equivalent schemes in Great Britain. Lord Hutton's report also recommended the key design features of the reformed schemes should be applicable in the Devolved Administrations, including Northern Ireland.
- 1.10 The devolved public service schemes therefore incorporate the same transitional protection arrangements as equivalent schemes in Great Britain. Legal advice confirms the implications of the Appeal Court decision is such that all schemes must be treated as affected by the McCloud decisions and so must be remedied.
- 1.11 Age discrimination cases lodged with Tribunals for Northern Ireland public service pension schemes have to date been postponed pending the outcomes of lead cases in England and Wales.
- 1.12 Department of Finance officials have worked closely with the Treasury and policy representatives from schemes across the UK, including those in NI, in the development of a core policy which can address the issue of discrimination as it applies across affected schemes. This approach is made practicable by the longstanding analogous nature of pension provision between NI schemes and comparable schemes in GB, and which enables the smooth interoperability of workforces; consistency of cost controls, and equity under the unitary UK tax regime. A Treasury consultation on the proposed policy for schemes in Britain established under Westminster legislation is now ongoing¹. This consultation for the devolved NI schemes deals with identical policy proposals to those carried in the equivalent Treasury consultation.

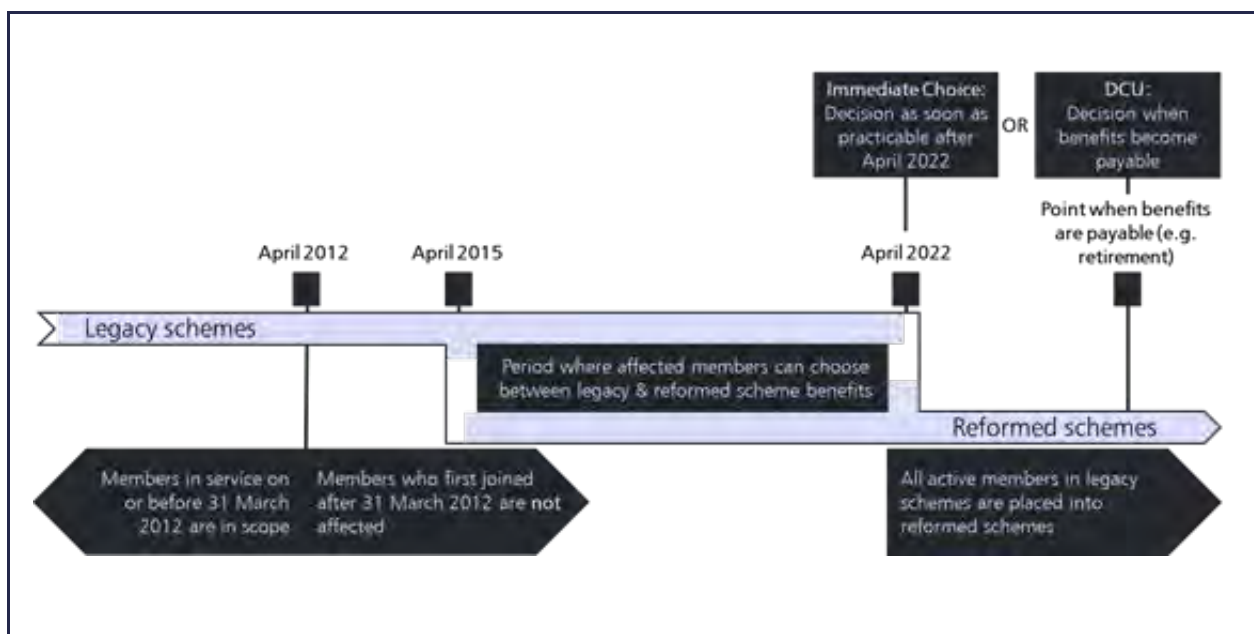
Purpose of this consultation

- 1.13 This consultation sets out proposals to remove the discrimination for all affected members within its scope. Claimants and non-claimants will be treated equally by having access to the same pension changes.
- 1.14 Legislation will be required: (a) to make changes to the schemes to remove the discrimination identified by the Courts for the period 1 April 2015 to 31 March 2022 (the remedy period); and, (b) to address future service beyond the remedy period.
- 1.15 Amendments will be required to scheme regulations, in order to implement these proposals; these will be the subject of further consultations on a scheme by scheme basis.
- 1.16 The specific elements of future legislation, including the timelines for these, will be developed following the responses to proposals set out in this paper.
- 1.17 In relation to the remedy period, simply extending the transitional arrangements to all eligible members - effectively placing them all back in their legacy schemes - could make many members worse off.

¹ <https://www.gov.uk/government/consultations/public-service-pension-schemes-consultation-changes-to-the-transitional-arrangements-to-the-2015-schemes>

- 1.18 The Department of Finance is therefore consulting on changes that would ensure members can keep or choose benefits in the reformed schemes if they wish. This would mean those who did not have transitional protection (and so moved to the reformed schemes in 2015) could choose to keep those benefits they have accrued in the reformed schemes, and those who did have transitional protection (and so did not originally have access to the reformed schemes) can now choose to have such access.
- 1.19 Changes could require retrospective adjustments to individuals' pensions and to their member contributions. Where pension entitlements change this may also have tax consequences – these are outlined in the relevant sections of the consultation document, and explained in more detail in Annex B.
- 1.20 This consultation also sets out proposals for future service beyond the remedy period. To ensure that schemes remain appropriate and affordable while treating members equally for future service, all active members will be placed in the reformed schemes in respect of employment from 1 April 2022. At that point the transitional protection provisions would be removed, but the final salary link for members with service in the legacy schemes will be retained.

Figure 1: Diagram of the choice and pension reform process:



- 1.21 Earlier this year technical discussions were held with stakeholders at the central forum for engagement with employer and employee representatives for the main devolved NI public service schemes - the Collective Consultation Working Group (CCWG) - to inform policy development at an early stage. These discussions made an extremely helpful contribution to the formation of the proposals contained in this document. The constructive engagement of all who participated is appreciated.

Scope

- 1.22 In Northern Ireland over 130,000 individuals are in scope of the changes proposed in this consultation to remove the discrimination back to 2015¹.
- 1.23 Under the proposed approach to removing the discrimination, all individuals in scope will be able to receive the benefits to which they are entitled, whether they have lodged a legal claim or not. It is important that changes are carefully considered, designed and implemented. It will take time to ensure this is done correctly. Most members will not draw benefits for some time and there is therefore time to implement changes before payments are due. It will be necessary also to ensure that the discrimination is addressed for those who receive a pension award before the changes are implemented. More details on this are set out in paragraphs 2.22-2.26. All relevant payments will be backdated where necessary.
- 1.24 This consultation relates to the main unfunded public service pension schemes made under the Public Service Pensions Act (Northern Ireland) 2014.
- 1.25 Due to differences in the way transitional protection was provided in the Northern Ireland Local Government Pension Scheme the Department for Communities will take forward a separate consultation on changes for that scheme. The Department of Justice also proposes a separate consultation on changes to the pension scheme for the devolved judiciary, reflecting the unique situation of that scheme.
- 1.26 It is envisaged that all schemes in scope will adopt broadly the same solution for removing the unlawful discrimination arising from transitional protection. However, it is likely that some elements will need to vary across schemes, reflecting differences in existing scheme design and characteristics which will require further consultation on a scheme by scheme basis.

Equality impacts

- 1.27 When formulating policy proposals, public authorities are required to take into account the needs and effects of their policy on people within the equality groups specified in Section 75 of the Northern Ireland Act 1998² and to have due regard to the need to promote equality of opportunity and foster good relations between people with different protected characteristics when carrying out their activities.
- 1.28 We would like to know your views as to whether any of the measures envisaged by this consultation might have any negative impacts relevant to this statutory duty or cause any other discrimination between different groups which ought to be avoided. There is evidence that some of the proposals may have differential impacts, but the Department's current view is that these will not have a disproportionate or otherwise unjustified impact on individuals. These are set out in more detail in the Equality Screening Exercise published alongside this

¹ Across all NI devolved schemes, i.e including the schemes for local government workers and the devolved judiciary, the total figure for members affected by age discrimination is over 180,000. For the reasons given at para 1.25 local government and devolved judicial schemes are not in scope of this consultation.

² <https://www.legislation.gov.uk/ukpga/1998/47/contents>

document. We welcome your views on this, and on ways to mitigate any such impacts.

Question 1: Do you have any views about the implications of the proposals set out in this consultation for people with protected characteristics as defined in section 75 of the Northern Ireland Act 1998¹? What evidence do you have on these matters? Is there anything that could be done to mitigate any impacts identified?

Question 2: Is there anything else you would like to add regarding the equalities impacts of the proposals set out in this consultation?

Interaction with Employment Tribunal proceedings

- 1.29 There are ongoing Employment Tribunal proceedings in England and Wales that concern a number of pension schemes and are to determine the remedy for the discrimination suffered by the claimants in these cases. There have also been claims made to the Tribunals in Northern Ireland, all of which are currently postponed. The intention is that any action to make changes to public service pension schemes will be consistent with any declaration of claimants' rights made by the Tribunals, although that will be kept under review as those proceedings progress. As set out in paragraph 2.3, the Department of Finance considers that it is appropriate to allow all affected members to choose to access either legacy or reformed scheme benefits for the relevant period, and such a choice will go beyond any remedy that the Courts or Tribunals would be able to order.
- 1.30 The intention is therefore that the proposals in this consultation will apply both to those who have lodged legal claims and to those who have not, to ensure that they are treated in the same way. Members do not need to submit a legal claim to be covered by the proposals in this consultation. Both claimants and non-claimants will be given the opportunity to receive the pension benefits for the period 1 April 2015 to 31 March 2022 that they consider most valuable.

How to respond

- 1.31 This consultation will run for 12 weeks and will close at midnight on Wednesday 18 November 2020. Responses can be submitted by email to: DoFpensionspolicy@finance-ni.gov.uk
- 1.32 Alternatively, please send responses by post to:

Public Service Pensions, Policy and Legislation Branch
Pensions Division

¹ <https://www.legislation.gov.uk/ukpga/1998/47/section/75>

Department of Finance
Waterside House
75 Duke Street
Londonderry
BT47 6FP

- 1.33 When you are responding, please make it clear which questions you are responding to. Additionally, please indicate whether you are replying as an individual or submitting an official response on behalf of an organisation.

Processing of personal data and confidentiality

- 1.34 This notice sets out how the Department of Finance will use your personal data for the purposes of the consultation on *Public Service Pension Schemes: changes to the transitional arrangements in the 2015 schemes* and explains your rights under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA).

The data we collect

- 1.35 Information may include your name, address, email address, job title, and employer, as well as your opinions. It is possible that you will volunteer additional identifying information about yourself or third parties.
- 1.36 The personal information is processed for the purpose of obtaining the opinions of members of the public and representatives of organisations and companies, about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest

Legal basis of processing

- 1.37 The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Department of Finance. For the purpose of this consultation the task is consulting on departmental policies or proposals or obtaining opinion data in order to develop good, effective government policies.

Special categories of data

- 1.38 Special category data (e.g. health, race, ethnicity, etc.) may be processed if such data is volunteered by the respondent.
- 1.39 Where special category data is volunteered by the respondent, it will be processed only where it is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department.

Who we share your responses with

- 1.40 Information provided in response to a consultation may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004 (EIR).
- 1.41 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.
- 1.42 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department of Finance.
- 1.43 Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place. Where information about respondents is not published, it may be shared with officials within other public bodies involved in this consultation process to assist us in developing the policies to which it relates. Examples of these public bodies appear at: <https://www.gov.uk/government/organisations>.

How long we will hold your data

- 1.44 Personal information in responses to consultations will generally be published and therefore retained indefinitely as a historic record under the Public Records Act (Northern Ireland) 1923.
- 1.45 Personal information in responses that is not published will be retained for three calendar years after the consultation has concluded.

Your Rights

- you have the right to request information about how your personal data are processed and to request a copy of that personal data
 - you have the right to request that any inaccuracies in your personal data are rectified without delay
 - you have the right, in certain circumstances (for example, where accuracy is contested), to request that the processing of your personal data is restricted
 - you have the right to object to the processing of your personal data where it is processed for direct marketing purposes
- 1.46 To access the personal data that the Department of Finance holds about you, contact: SAR@finance-ni.gov.uk

Complaints

- 1.47 If you have any concerns about the use of your personal data, please contact us via this mailbox: dataprotectionofficer@finance-ni.gov.uk.
- 1.48 If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

<https://ico.org.uk/make-a-complaint/your-personal-information-concerns/>

- 1.49 Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the Courts.

Contact details

- 1.50 The data controller for any personal data collected as part of this consultation is the Department of Finance, the contact details for which are:

Department of Finance
Clare House
303 Airport Road
Belfast BT3 9ED

- 1.51 The contact details for the Department of Finance Data Protection Officer (DPO) are:

Jenny Lynn
Room 20, Dundonald House
Stormont Estate
Upper Newtownards Road
Belfast BT4 3SB
Email: DataProtectionOfficer@finance-ni.gov.uk

Chapter 2

Removing discrimination arising from transitional protection

Case for change

- 2.1 The legal cases that ruled that transitional protection was unlawful are known as the McCloud and Sargeant cases. Through these cases, the Courts identified unjustified age discrimination, in that entitlement to transitional protection was dependent on age. The Courts also identified indirect race and sex discrimination arising on the particular facts of those cases.
- 2.2 In order to remove this discrimination, equal treatment must be applied retrospectively back to 1 April 2015 and prospectively for the period until a fully equalised system takes effect.
- 2.3 The simplest way to achieve this would be to extend transitional protection to all members who were in service on or before 31 March 2012 and on or after 1 April 2015, including those with a qualifying break in service of less than 5 years. This would mean retrospectively moving all those who were originally ineligible for transitional protection back to their legacy schemes. While returning protected members to their legacy schemes would be consistent with declarations issued by Tribunals to date, it would be detrimental for a significant number of members who are likely to be better off in the reformed schemes. The proposal in this consultation aims to ensure equal treatment by offering affected members a choice of which scheme benefits they want to have in respect of their service between 2015 and 2022.
- 2.4 While the legacy schemes are mainly based on final salary, and mostly have lower Normal Pension Ages (NPAs), the accrual rates are generally lower than in the equivalent reformed schemes¹. This means that pensions in the reformed schemes build up quicker than in the legacy schemes, despite being paid on an unreduced basis at later ages. Depending on the specifics of each scheme and individual circumstances, many members can therefore be better off in the reformed schemes, while others may be better off in the legacy schemes.
- 2.5 Similarly, there will be members who were originally protected and so remained in the legacy schemes, who will be likely to be better off in the reformed schemes. Accordingly, those who were originally protected will also be offered the chance

¹ Some schemes offered variations in accrual rates, for example in the police scheme some members could avail of options for double accrual under specific circumstances.

to be treated as if they had been in the reformed schemes in respect of their service between 2015 and 2022.

- 2.6 The below examples illustrate some situations whereby members may be better off in the reformed schemes. This is particularly the case for members without significant earnings growth in their career from 2015 onwards, or who choose to retire after their legacy scheme's NPA. Annex C contains further information on these examples and additional examples of alternative scenarios, including where some members may be better off in the legacy schemes. Ultimately, however, members will need to consider for themselves whether, having regard to their own personal circumstances and priorities, they would prefer to be in their legacy or reformed schemes in respect of their service between 2015 and 2022.

Example 1

A **nurse** who is a member of the **HSC (Health and Social Care) Pension Scheme** (2015 scheme and 2008 section).

In **2012 they were 45**, and so **did not receive transitional protection**. However, they will now be given a **choice of pension for their service over the remedy period**, of either:

Legacy scheme (2008 section)	Reformed scheme
1/60 th of final salary each year Optional lump sum Payable unreduced from age 65	1/54 th of revalued salary each year Optional lump sum Payable unreduced from State Pension age (age 67)

If they had a **salary of £30,000 in 2015**, experience future annual **salary increases of 1% above inflation** and **retire at 65**, their choice with respect to the remedy period will be between the following pension amounts at retirement:

Legacy scheme: £5,450 pa	Reformed scheme: £6,040 pa
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Assuming they choose to not give up any pension for a lump sum and allowing for the reformed benefits being reduced for early retirement.

This means they would likely be **better off receiving reformed scheme benefits**.

Example 2

A **teacher** who is a member of the **NI Teachers' Pension Scheme** (Normal Pension Age 60 section).

In **2012 they were 50**, and so **received transitional protection**. However, they will now be given a **choice of pension for their service over the remedy period**, of either:

Legacy scheme (NPA 60)	Reformed scheme
1/80 th of final salary each year Automatic lump sum (3x pension) Payable unreduced from age 60	1/57 th of revalued salary each year Optional lump sum Payable unreduced from State Pension age (age 67)

If they had a **salary of £40,000 in 2015**, experience future annual **salary increases of 2% above inflation** and **retire at their state pension age (67)**, their choice with respect to the remedy period will be between the following pension amounts at retirement:

Legacy scheme: £5,710 pa	Reformed scheme: £6,570 pa
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(+ £17,130 lump sum)

(+ £17,130 lump sum)

Assuming, for ease of comparison, that under the reformed scheme benefits, they would choose to give up pension for a lump sum equivalent to that they would have automatically received under the legacy scheme.

This means they would likely be **better off receiving reformed scheme benefits**.

2.7 Aside from the value of the core member pension, there are other differences between the reformed and legacy schemes. These vary between schemes but may, for example, include some of the following:

- whether there is an automatic cash lump sum in addition to regular pension payments
- the age at which members can choose to retire with an unreduced pension (Normal Pension Age)
- member contribution rates
- qualification for ill health retirement
- entitlement to survivor benefits

2.8 Members will place different values on these differences in scheme design, depending on their personal circumstances. Some members are likely to attach greatest importance to the value of the core member pension, but others may favour particular elements of one of the schemes. For example, an individual with dependants may place more weight on survivor benefits than an individual with no immediate family. For some individuals there will also be differences in tax liabilities arising from membership of reformed or legacy schemes, which may impact those individuals' preferences.

2.9 For these reasons, it is not practicable or appropriate for scheme managers to decide on behalf of individual members which scheme they should be treated as having been in between 2015 and 2022. Only individual members will be able to decide which benefits they value most. Both options set out in this consultation therefore give affected members a choice of which set of scheme benefits they want to receive for the period from 2015 to 2022: the set of benefits they had before 1 April 2015 (the legacy scheme), or the set of benefits as provided since 1 April 2015 by the reformed scheme established under the Public Service Pensions Act (Northern Ireland) 2014.

2.10 Given the extent to which choices may depend on personal circumstances, future intentions, expectations and personal priorities, in order to make this decision it is important that members are given appropriate information about the different options, the ways in which choosing one option rather than another may (at any rate at a general level) make a difference to members' positions, and how further advice might be obtained if required.

Remedy period

2.11 The issues being expressed by these proposals have existed since the reformed schemes were introduced on 1 April 2015. Under the proposals in this

consultation document, the period for which members would be offered the choice of accruing benefits in the legacy or reformed schemes will start from 1 April 2015 and would continue until 31 March 2022.

- 2.12 It is separately proposed that from 1 April 2022 all active members will be moved into the relevant reformed schemes, as set out in Chapter 3 below. 1 April is the first day of the new 'scheme year' and the date when pensions changes are normally introduced. If the proposals set out in this consultation paper are ultimately adopted, the scheme year starting on 1 April 2022 is the earliest date by which the relevant legislation and administrative arrangements necessary to implement the present proposals (including the proposal that all active members would be moved into their relevant reformed scheme,) is expected to be in place.

Members in scope

- 2.13 The unlawful discrimination identified by the Courts was between those who were in service on 31 March 2012 and who received full transitional protection and those who were also in service then but did not receive full transitional protection because they were more than ten years from NPA. It is between these groups that there is now a requirement to equalise treatment. This applies to all those members, whether they are currently active, deferred or pensioner members.
- 2.14 As members who first joined their scheme after 31 March 2012 were ineligible for transitional protection regardless of their age, they were not subject to the discrimination identified by the Courts.
- 2.15 The purpose of the original transitional protection was to protect those closest to retirement, already in public service, and so with least time to prepare, from the changes (although the Courts have now decided that this did not justify the resulting discrimination).
- 2.16 This rationale did not apply to those who joined the schemes on or after 1 April 2012. (As set out in paragraph 3.10 below, there are practical reasons why significant changes to pension arrangements are generally made with effect from a date of 1 April). The proposed introduction of the reformed schemes was well publicised at the time. Anyone joining after 31 March 2012 would, therefore, reasonably be expected to have known that they would join or be moved to the reformed schemes. They could not reasonably have expected to remain in, or join, the legacy schemes. Nor were they subject to the unlawful discrimination identified by the Courts because transitional protection was not available to anyone who joined after 31 March 2012. Therefore, it is not appropriate to extend to them the same choice of scheme membership in respect of their service between 2015 and 2022 as will apply to those who were already in service at 31 March 2012. To do so would also increase the administrative workload and financial cost of these proposals. Consequently, such persons are not within scope of the proposals set out in this document.
- 2.17 Individuals who were in service on or before 31 March 2012 but subsequently left and re-joined will be in scope of these proposals, provided their break in service meets the criteria for continuous service set out in their scheme regulations and was less than five years.

Taper protected members

- 2.18 In addition to full transitional protection, a number of schemes included tapered protection. In most schemes this applied to those between ten and either thirteen and a half or fourteen years from NPA on 31 March 2012, depending on scheme. These individuals were able to remain in the legacy schemes for longer than those who were completely unprotected, before moving to the reformed schemes. This was on a sliding scale; those taper protected members closest to NPA in 2012 stayed in the legacy schemes longer than those further from NPA.
- 2.19 The effect of the judgment in the McCloud case is that this tapered protection was unjustifiably discriminatory. Maintaining an age-based system of tapered protection, or extending it to all members in scope of this consultation, would therefore be perpetuating or indeed extend such discrimination. It would also be extremely complex to administer in the context of a choice-based system. As a result, under either of the main options set out here for consultation, all members, whether originally fully protected, taper protected or unprotected, will be able to choose legacy scheme benefits or reformed scheme benefits for the whole remedy period. They will not be given the choice to have legacy benefits for some of the period and reformed benefits for the rest. The choice to be made available will be beneficial for the majority of taper protected members. Requiring that choice to be exercised for the entirety of the remedy period is necessary to ensure that the remedy is implemented fairly for all members.
- 2.20 It is possible that for a small number of individuals tapered protection may have been more advantageous than the choice of receiving either reformed or legacy scheme benefits for the entire remedy period.
- 2.21 However, any such advantage will have arisen by chance, in the sense that it is not something which the system of tapered protection deliberately set out to produce, and it would have been as a result of a policy that has been identified by the Courts as giving rise to unjustified discrimination. Alternative options have been considered to test whether it would be possible to construct a system of tapered protection that was not age based. However, even if this was possible, any such system would be extremely complex both for members and administrators and would likely involve members having to make a much more convoluted choice than that required either by the immediate choice exercise or by the DCU. Further, since it would by definition be a different system, it would not necessarily leave members in the same position as under the original age-based taper in any case.

Question 3: Please set out any comments on our proposed treatment of members who originally received tapered protection. In particular, please comment on any potential adverse impacts. Is there anything that could be done to mitigate any such impacts identified?

Members who retire or receive pension benefits before the consultation changes are implemented

- 2.22 Generally speaking, members in scope will not be asked to make their choice between benefits until some point in the period after 1 April 2022 (under the immediate choice option), or at a later date when they come to retire and receive benefits (under the DCU option). Some affected members have already retired with a pension in payment, or will do before the changes in this consultation are implemented. Everyone in this position will ultimately receive a choice of service in their legacy or reformed scheme for the period between 1 April 2015 and the date of their pension award.
- 2.23 Members who have already retired and received a pension award, from either their legacy or reformed scheme, will be given this choice as soon as practicable once the legislative changes are implemented. Any revised award will be backdated to the date their pension award was made. Members of the legacy schemes who retire between now and the implementation of the changes will be treated in the same way.
- 2.24 It is accepted that members of the reformed schemes who are affected by the unlawful discrimination identified by the Courts, have an entitlement to be treated as a member of their legacy scheme for the remedy period if they wish. In recognition of this, we will work with schemes to seek to give these members of the reformed schemes who were not originally protected and who retire between now and 2022 that choice at retirement, where this is administratively possible. In particular, we will work with schemes to seek to offer reformed scheme members undergoing ill-health retirement a choice of legacy or reformed scheme benefits at retirement, subject to them meeting the criteria for payment of benefits under each scheme. However, this is administratively complex and is expected to require systems changes. Where it is not possible to offer this choice to members at the point their award is made they will be given this choice as soon as practicable once the legislative changes are implemented and again any revised award will be backdated to the date the member's pension award was made.
- 2.25 As set out in more detail in Annex A, it is important to note that, where members choose to change scheme, they may in some cases have to repay benefits that they have already received. Where this is so, or payment of additional contributions will be required, this will be made clear to members when making their choice.
- 2.26 If the benefits a member has received change, then tax adjustments may be required. The tax rules will apply to the facts of an individual's updated situation.

Options

- 2.27 This consultation is in particular seeking views on two options: an **immediate choice exercise** and a **deferred choice underpin (DCU)**.

- 2.28 Both options would involve members having the choice between their legacy and reformed scheme benefits for their service in the remedy period, but for the majority of members the choice would be made at different times under the two options.
- 2.29 Under the immediate choice option, most members would decide which benefits to take in the years after the point of implementation (i.e. 2022).
- 2.30 In contrast, under DCU for the majority of members the decision about which benefits to take would be deferred until the point at which they take their pension benefits.
- 2.31 As set out in paragraph 2.23, under either option, some members who take pensions benefits before 1 April 2022 may be asked to make their decision sooner.
- 2.32 Under both options, the choice would be between accruing service in the legacy scheme and accruing service in the reformed scheme. Members would therefore have to choose between all the benefits in the legacy scheme or all of the benefits in the reformed scheme; they could not seek to be a member of both schemes, or to have a combination of legacy and reformed scheme benefits with respect to the remedy period.
- 2.33 An immediate choice would satisfy the need to give members the choice between legacy and reformed scheme benefits. It would provide relative certainty for the majority of members at a much earlier stage. However, members would have to make a decision based on assumptions around factors such as their future earnings and career paths, their family circumstances now and in future, and when they expect to retire. For some, this would involve making assumptions over what might happen over a period of many decades. There is therefore a chance that some members would choose to accrue service in a scheme which does not ultimately turn out to be the most beneficial for them. Members already make assumptions about their futures when making decisions about existing elements of their pensions. For example, when deciding when to retire and whether or not to take a lump sum in return for reduced annual pensions, or how much lump sum to take, members may make assumptions around future life expectancy, which may prove incorrect.
- 2.34 The deferred choice underpin would also give members the choice between legacy and reformed scheme benefits. By delaying the decision until the point at which benefits are awarded, the DCU would reduce the reliance on forecasts and assumptions, and therefore the possibility of members making what might turn out to be the wrong choice. Making the decision when benefits are awarded (for most members, the point of retirement) would mean they could be based on known benefit entitlements late in, or at the end of, a career rather than assumptions about their future career. This option does, however, mean the majority of members would have less certainty about the benefits they would ultimately receive until they take those benefits (although they would know their benefits would be at least as good for them personally as they already expect). DCU would also be more challenging than immediate choice to design and administer longer term.

- 2.35 The next two sections set out in more detail how the immediate choice and DCU options might work.

Immediate choice

- 2.36 Under this option members would make an irrevocable decision as to whether to accrue benefits in their legacy or reformed pension scheme for the remedy period. For most members this choice would be made in the period after the end of the remedy period. It may be made earlier for some of those who take a pension award before 2022.
- 2.37 Members would be given a reasonable amount of time to make the relevant choice – probably 12 months from the date they are first contacted. Throughout that period, schemes would make multiple efforts to contact members who had not yet responded, for example at 3, 6, 9 and 12 months. Any member who did not respond in this timeframe would be deemed to have chosen to accrue benefits in their existing scheme. For members who were originally transitionally protected this would be the legacy scheme. For those who did not receive transitional protection, this would be the reformed scheme. This “default” position would avoid the possibility of changing the benefits that members are currently entitled to without their express consent.
- 2.38 As set out in paragraph 2.20 above, members who originally had tapered protection would be required to choose between their legacy scheme benefits and the reformed scheme benefits. They could not have a combination of the two. There is a question as to what the default option should be for members who originally received tapered protection but did not respond to the immediate choice exercise. An option would be to deem them to have accrued benefits in their reformed scheme for the whole remedy period, as that is the scheme they would currently be in (all having tapered by the point of implementation after 2022). Alternatively, however, they could be deemed to have accrued benefits in their legacy scheme for the remedy period. Under either option, it is possible that some members who do not respond may be placed in the scheme that is not the most beneficial for them for the remedy period. This will be dependent on individual circumstances.
- 2.39 It may be clearer in some schemes that a large proportion of members who did not have transitional protection would be financially better off moving back to the relevant legacy scheme. It is therefore possible that a different “default” option could be chosen for the members of those schemes, including taper protected members, where no response to the choice exercise was received. This is something relevant schemes could consult on directly with their stakeholders following the Department of Finance response to this consultation.

Question 4: Please set out any comments on our proposed treatment of anyone who did not respond to an immediate choice exercise, including those who originally had tapered protection.

2.40 While scheme managers could not provide forecasts of exactly what each member would receive in the future from either scheme, and could not advise members on which was the “best” choice for them, they would be able to provide some information on the different benefits available under each scheme and to make available tools such as online calculators and models for members to use. These tools could allow members to input assumptions for variables such as future earnings, prices or earnings indexation, expected retirement age, their longevity and possible survivor benefits, to see what benefits they might expect to receive from the different schemes in each scenario on the basis of those assumptions. Ultimately though, these could only be projections based on particular assumptions. Members would need to take their own decision as to which scheme best reflects their personal circumstance and priorities.

The examples below show some of the ways in which assumptions an individual makes could affect which scheme is ultimately better for them.

Example 1 revisited

Example 1 considered a **nurse** who is a member of the **HSC Pension Scheme** (2015 scheme and 2008 section), who if they were to retire at age 65 would choose between the following pension amounts with respect to the remedy period at retirement:

Legacy scheme: £5,450 pa	or	Reformed scheme: £6,040 pa
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If the same nurse as set out in example 1, gets promoted twice, receiving **an additional 10% salary increase** at the end of the remedy period **and an additional 5% salary increase** five years later, their choice if retiring at age 65 now becomes, either:

Legacy scheme: £6,270 pa	or	Reformed scheme: £6,040 pa
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This means they would likely be **better off receiving legacy scheme benefits**. Therefore, for this hypothetical member a change in future career progression has changed which scheme is expected to be more beneficial.

Example 2 revisited

Example 2 considered a **teacher** who is a member of the **NI Teachers' Pension Scheme** (Normal Pension Age 60 section), who if they were to retire at their State Pension age (67) would choose between the following pension amounts with respect to the remedy period at retirement:

Legacy scheme: £5,710 pa (+ £17,130 lump sum)	or	Reformed scheme: £6,570 pa (+ £17,130 lump sum)
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If the same teacher as set out in example 2 **chose to retire aged 60** instead, then their final salary would be lower and the reformed scheme benefits would be reduced for early retirement. Their choice is now:

Legacy scheme: £4,340 pa (+ £13,020 lump sum)	or	Reformed scheme: £3,490 pa (+ £13,020 lump sum)
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This means they would likely be **better off receiving legacy scheme benefits**. Therefore, for this hypothetical member a change in retirement age has changed which scheme is expected to be more beneficial.

- 2.41 Because legacy and reformed schemes have different accrual rates, for a small minority of members their decision to take different benefits for the remedy period than they have accrued hitherto could have tax implications. This is set out in more detail at Annex B. There is a usual 4-year statutory time limit for reassessing tax for previous years. Therefore in cases where a change in benefits means an individual owes more in tax, they must pay this additional tax to HMRC for any years of the remedy period within the current tax year and the 4 full tax years preceding the point at which the choice is made. But where a change in benefits means an individual is owed money because their tax liability is lower, the government will refund the equivalent of the excess tax paid with respect to all years of the remedy period. Individuals affected will need to reassess their tax positions for each individual year of the remedy period. Any changes that impact an individual's tax position within the statutory time limit will need to be reported to HMRC. Individuals may also need evidence of their tax position for earlier years to help them access the appropriate compensation.
- 2.42 The main advantage of an immediate choice is that it should resolve the issue within a few years and thereby gives all members clarity over scheme membership for the remedy period relatively quickly. Although the choice exercise would take some years to implement, members would be clear about which scheme they were accruing benefits in during the remedy period as soon as their choice was received by the scheme administrator.

Deferred choice underpin (DCU)

- 2.43 Under the DCU, eligible members would, in the first instance, be deemed to have been accruing benefits in their legacy scheme for the remedy period, regardless of whether they originally had transitional protection or not. When those members are entitled to receive pension benefits under either their legacy or reformed scheme design (e.g. on retirement), they would then be offered a choice of which

set of benefits they wished to receive for the remedy period¹. In technical terms, individuals would remain members of the legacy scheme, but if they opted for reformed scheme benefits, they would be paid those benefits within the legacy scheme, by means of a 'statutory underpin'. Because this would be done at the point benefits would be payable, the choice would be based on known benefit entitlements provided by the two schemes, rather than assumptions about what those entitlements might be. This would mean that members should be clearer as to what they would get under each option and so could more easily choose whichever is better for them.

- 2.44 This option would mean that in 2022 eligible members would be returned to their legacy scheme for the remedy period in the first instance. It would also ensure that those who ultimately are better off in the reformed schemes could still access their reformed scheme benefits at the point they are entitled to receive those benefits. Asking members to make their decision knowing what they could receive from each scheme at the point benefits are taken may make their decision easier. However, there would still be some uncertainties. For example, it would not be known how long payments will be made for, which will be relevant where one scheme provides a higher member pension but the other provides a higher survivor pension.
- 2.45 Delaying the decision until the point benefits are payable or awarded in other ways does mean that some members would not have certainty over which scheme benefits they would receive in relation to service during the remedy period, potentially for a considerable period of time. This could be mitigated to some extent by the fact that their annual benefit statements would reflect both legacy and reformed scheme benefits. However, it would also be more complicated for schemes to administer the DCU. They would need to capture and retain additional data on entitlements under both options and operate this solution over a much longer timeframe, until all members in scope (or their dependants) were receiving pensions. These administrative and practical complexities are set out in the section on "Administration" below and in more detail in Annex A.
- 2.46 For annual allowance tax liabilities, only the small minority of individuals with sufficient income and/or pension accrual to generate an annual allowance charge could be affected. Under the DCU option, there are two points at which an individual's scheme benefits could change. This may trigger an adjustment in their annual allowance tax charge, if the individual has sufficient pension accrual. More details on this and other potential tax charges are set out in Annex B.
- 2.47 First, at the end of the remedy period, pension accrual may change when members will be deemed to have been members of their legacy scheme for the remedy years. For those individuals who were originally protected in 2015, and consequently have accrued legacy scheme benefits since then, their pension benefits are unchanged and therefore no annual allowance adjustment will be required. But for unprotected members, being deemed to have been members of their legacy scheme will retrospectively alter the pension benefits they have accrued over the remedy period.

¹ Although benefits could not be brought into payment under a particular scheme design unless the member had reached the Minimum Pension Age for taking benefits under that particular scheme design.

- 2.48 In line with the usual 4-year statutory time limit for reassessing tax, where this change in scheme membership means an individual owes more in tax, they must pay it for accrual increases arising in the current tax year and the previous 4 full tax years. So if scheme members are moved back into their legacy schemes on 1 April 2022, they must pay tax owed on accrual increases arising since 6 April 2017. But where a decrease in benefits accrued means an individual is owed money because their tax liability is lower, the government will refund the equivalent of the excess tax paid with respect to all years of the remedy period. Individuals affected will need to reassess their tax positions for each individual year of the remedy period, and any changes within the statutory time limit will need to be reported to HMRC. Individuals may also need evidence of their tax position for earlier years to help them access the appropriate compensation.
- 2.49 Second, at the point when an individual draws their benefits (usually at retirement), if they choose to receive reformed scheme benefits rather than legacy scheme benefits for the remedy period, this could trigger an annual allowance charge. Because of the sudden change in pension accrual at that point, the charge triggered is likely to be greater than the annual allowance charges that individual would have faced had they accrued the same reformed scheme benefits for the remedy period throughout their career. As the higher charge is a direct consequence of the way the DCU option has been designed, it would be unfair to expect individuals to pay the full charge. Individuals will be compensated for the difference in their annual allowance charge liability arising from the decision to take reformed rather than legacy scheme benefits for the remedy period. This will apply to the year in which individuals take their pension benefits.
- 2.50 While members would have more uncertainty over their scheme arrangements for longer, the main advantage of the DCU is that members would be able to make their decision with fuller information about what they would receive under each scheme. They are therefore less likely to choose the scheme that ultimately is not the best one for them.

Administration

- 2.51 Both options represent an administrative challenge given the size of membership and the number of members who could change schemes. The administration of immediate choice would be resource intensive and time pressured in the shorter term. For the DCU, considerable work would be required in the short term to move many members of the reformed schemes back to their legacy schemes; and although the rest of the administrative impact of the DCU would be smoothed over decades, that would also mean maintaining the new systems for much longer. Therefore, a number of issues associated with both options need to be carefully considered.
- 2.52 During the period when these changes would have to be implemented, schemes will also be dealing with a number of other tasks going beyond the more routine but nevertheless important aspects of pensions administration. These include preparing for and completing scheme valuations; implementation of a long-term solution to Guaranteed Minimum Pension equalisation; and the introduction of the pensions dashboard.

- 2.53 To deliver the immediate choice option, schemes would have to develop online resources including benefit calculators for members to use to inform their decision. They would also have to contact over 130 thousand people and process their decisions in a relatively short period of time after 1 April 2022. That would include a considerable number of deferred members or members who have been awarded pensions in payment since April 2015, most of whom will no longer be in scheme employment and some of whom may be difficult to trace. The requirement to change IT systems, including developing software quickly, could increase the risk of error and impact delivery. This option is also likely to incur greater administrative costs in the short term.

- 2.54 The DCU proposal presents slightly different issues; the volume of changes needing to be made would be spread over a much greater time period (although there would be a need under either option to resolve cases of members who have retired or died since April 2015). This means schemes would have longer to process the majority of cases and could build software to do it for them, minimising the amount of manual work required before an automated solution was in place.

- 2.55 The complexities of the DCU, however, are greater. Scheme administrators would probably need to run two sets of benefit designs alongside one another for over 30 years. Scheme administrators already run several legacy schemes alongside the reformed schemes and most members in reformed schemes at present also have rights in a legacy scheme that are still linked to their current and future earnings. However, under DCU, schemes would be calculating benefit accrual over the period from 2015 to 2022 on the basis of two benefit designs instead of one. While the overall risk of error might be slightly reduced due to the longer timeframe for implementation, it could increase in the long term if there were problems in retaining knowledge of the special features of benefit design for the 2015-2022 period in future decades.

Table 2.A: High level summary of immediate choice & DCU

The following is a high-level summary of the main features of the two remedy options, but which is preferable might also depend on other features as set out in the remainder of the consultation document.

	Immediate choice	Deferred choice underpin
Remedy Period	• 1 April 2015 – 31 March 2022•	• 1 April 2015 – 31 March 2022
When would members make their choice?	• Irrevocable choice made as soon as practicable after 31 March 2022.	• Irrevocable choice made when a pension award becomes payable (usually when the member retires). • Until then, members would be deemed to have been in their legacy scheme for the remedy period.
What information would be provided?	• Decision based on assumptions, for most.	• Decision based on known member entitlements.

	<ul style="list-style-type: none"> • Schemes would provide information and online calculators to assist members in forecasting their pension entitlement under both schemes. 	<ul style="list-style-type: none"> • Schemes would provide direct comparisons of actual entitlements under both schemes.
Benefits to members	<ul style="list-style-type: none"> • Addresses the issue relatively promptly, giving certainty to members as to their pension arrangements for the remedy period. 	<ul style="list-style-type: none"> • Ensures members can make their decision based on actual entitlement to benefits rather than having to do it based on assumptions.
Potential downsides for members	<ul style="list-style-type: none"> • Decision based on assumptions, so some may choose the scheme that does not turn out to be most beneficial for them. 	<ul style="list-style-type: none"> • Takes longer to resolve the issue so relative uncertainty over pension arrangements until members retire. • Some technical elements may be more complex to explain and resolve – see Annexes A and B.
Tax treatment and compensation, where relevant	<ul style="list-style-type: none"> • A member's tax position would be corrected within the statutory time limit to reflect their choice of benefits. • Where they owe tax, this would be recouped for the 4 tax years before their decision point. Where they have overpaid tax, the government will repay this without a time limit. 	<ul style="list-style-type: none"> • Non-transitionally protected members' tax will be corrected, within the statutory time limits, in 2022 when they are deemed to have been in the legacy scheme. • Where tax is owed, this would be recouped for the 4 tax years before an individual's scheme benefits change. Where members have overpaid tax, the government will repay this without a time limit. • Where a member chooses reformed scheme benefits at the point of retirement, their tax position will be reassessed again. Where an AA tax charge arises from the choice, the scheme will compensate members for the charge.

Question 5: Please set out any comments on the proposals set out above for an immediate choice exercise.

Question 6: Please set out any comments on the proposals set out above for a deferred choice underpin.

Question 7: Please set out any comments on the administrative impacts of both options.

Question 8: Which option, immediate choice or DCU, is preferable for removing the discrimination identified by the Courts, and why?

Costs

- 2.56 It is currently estimated that removing unlawful discrimination back to 2015 in Northern Ireland public service schemes will cost on average around £100 million for each year of the remedy period in additional future pension payments to members of those schemes in scope of this consultation. This equates to approximately £700m for the remedy period. This reflects the expected cost of members receiving benefits from whichever scheme provides the highest value to them for the remedy period. These costs are in addition to those already arising from members receiving benefits from the scheme they are currently in. These cost estimates are based on 2016 valuation data and assumptions and are provided to give a broad indication of the financial impact. Some of the methodology and assumptions needed to estimate the costs have been refined and updated since previous published estimates. When the costs are measured in the valuation and financial accounting processes, they may differ from the costs set out above as they are highly dependent on the approach and assumptions adopted.
- 2.57 The costs of removing the discrimination will feed into future employer contribution rates once the 2020 scheme valuations are completed. This measure of the costs will be based on the data and assumptions used in the 2020 valuations and is therefore likely to differ from the costs above. It is only one of many factors that could impact employer contribution rates in the next valuations.
- 2.58 The cost control mechanism introduced as part of the 2015 reforms was paused in March 2019 given the uncertainty arising from the judgment in the McCloud and Sargeant cases.

Chapter 3

Future pension provision

The 2015 schemes

- 3.1 The schemes established under the Public Service Pensions Act (Northern Ireland) 2014 and introduced on 1 April 2015 were based on the recommendations of the Independent Public Service Pensions Commission. Whilst the Courts have found that transitional protection arrangements introduced as part of their implementation gave rise to unlawful discrimination, the objectives and validity of the reformed schemes themselves have not changed or been affected.
- 3.2 It is widely acknowledged that these pension schemes are among the best available in the workplace: backed by the taxpayer; index-linked; and offering guaranteed benefits on retirement. They compare very favourably to the typical scheme in the private sector. The Department of Finance believes that these schemes represent appropriate pension provision for public service workers.

Scheme design

- 3.3 The move from final salary to career average design – a key recommendation of the Commission – has created a fairer system. Those with very considerable increases in their earnings over their career are no longer likely to be relatively favoured compared with their colleagues who did not enjoy such advantages. Indeed, as has become clear in the Tribunal process, many hundreds of thousands of members are likely to be better off in the reformed schemes than they would have been in the legacy schemes. Reversing the reforms for the future would make these members worse off.

Longer working lives

- 3.4 As life expectancy has increased since the introduction of the legacy schemes, people should expect to have longer working lives. Most of the reformed schemes have a Normal Pension Age (NPA) linked to the member's State Pension age (the age at which a State Pension can be received). There are exceptions for the police and firefighters, where the NPA is now set at 60 for those retiring from active police service and 55 for firefighters. Scheme members can choose to retire at a younger age than their NPA, as long as they have reached their Minimum Pension Age and their pension is adjusted to allow for payment before NPA. They can also choose to work beyond their NPA and receive a bigger pension.

Controlling costs

- 3.5 The total annual cost of paying out unfunded public service pension scheme benefits in the devolved NI schemes stood at £1.3 billion in 2018-19. Most of this cost is met by the taxpayer.
- 3.6 It is important that these costs are kept under control, to ensure the schemes are affordable and sustainable for the long-term. The introduction of reformed schemes with career average design, and Normal Pension Ages linked to State Pension age for most schemes, were important steps to protect against unsustainable increases in costs.

Closing the legacy schemes for all members and equalising future treatment

- 3.7 Public servants who first joined after 31 March 2012 are already members of reformed schemes. It is proposed that all active members who joined before 1 April 2012, who are not already members of reformed schemes, will be placed into their respective reformed schemes from 1 April 2022, ensuring the equal treatment of all members. This means bringing forward primary legislation to remove the transitional protection provisions and close legacy schemes completely at 31 March 2022. This would ensure that all active members are treated equally in respect of the pension scheme designs offered for future service and are all in the reformed schemes from 1 April 2022. It would be unfair for some members, and not others, to be in the legacy scheme beyond this date.
- 3.8 The final salary link for members with prior service in final salary schemes would be retained; meaning for these members, benefits relating to membership of legacy final salary schemes would be based on pensionable pay on or near their retirement and not at the point they move to a reformed scheme.
- 3.9 2022 is the earliest point at which the necessary primary legislation and administrative arrangements to implement these changes are likely to be in place. 1 April is the normal date on which pensions changes are implemented.
- 3.10 Changes to public service pension schemes have been introduced on the first day of the financial year for many decades. Introducing changes at the start of the financial year means that pension benefits are aligned with scheme accounting years and actuarial valuation periods. Taking 1 April 2022 as the date allows sufficient time to consult on the proposals and, subject to decisions taken following the consultation, introduce the necessary legislation. Members of the legacy schemes will have more than 20 months' notice of these plans and will be able to participate in the reformed schemes in relation to any eligible employment from 1 April 2022 onwards.
- 3.11 In introducing the reformed schemes in 2015, it was never the intention that the legacy schemes would continue for a long period of time. The NI Assembly passed legislation such that no benefits would be provided under the legacy schemes in relation to employment after 1 April 2015, but allowed for exceptions to be made. The exceptions made in scheme regulations were intended to be

short-term in their nature, because they were applied only to members who were within 10 years of their NPA under the legacy schemes.

- 3.12 By 1 April 2022, all members who were offered transitional protection from 2015 will in fact have reached their NPA in their legacy scheme. However, if such members decided to work beyond their legacy scheme NPA, they would then accrue benefits in their respective reformed scheme from 1 April 2022. To the extent that this change has an impact on such a member's pension it may be beneficial, for example due to higher accrual rates in the reformed schemes.

Question 9: Does the proposal to close legacy schemes and move all active members who are not already in the reformed schemes into their respective reformed scheme from 1 April 2022 ensure equal treatment from that date onwards?

Annex A

Technical details

Revisiting past cases

- A.1 Many members who were in service for a part of the remedy period will have since retired and currently be in receipt of a pension. Such members would also be given a choice of benefits between the legacy and reformed schemes with respect to the remedy period. The member would make a retrospective choice whether to receive benefits from the legacy or reformed scheme with respect to their service after 1 April 2015. This would mean that:
- a member who was originally eligible for transitional protection could instead choose to receive reformed scheme benefits
 - a member originally eligible for tapered protection would be required to make a choice between legacy scheme and reformed scheme benefits
 - a member who was originally not eligible for any form of protection could instead choose to receive legacy scheme benefits
- A.2 If an actuarial adjustment was required with regards to the pension that a member could alternatively choose, then the actuarial factors in force at the date of their retirement would be used. This would ensure that the pension was retrospectively corrected to the same level it would have been if the member had had access to it at retirement. Such an adjustment might reflect a reduction if the member retired before the relevant Normal Pension Age, or an uplift if they retired after.
- A.3 There are various issues and options that apply to the potential changes to pension commencement lump sums:
- For example, where a member's benefits retrospectively change, they could be permitted to revisit the lump sum commutation decision they made at retirement. This would allow members to commute some of the additional pension they were now receiving; or in the event that they received an increased automatic lump sum under a legacy scheme design, they might wish to reduce the level of any optional commutation. This would be subject to any limits required by schemes' rules and pensions tax law regarding the maximum allowance, and time allowed for payment, for pension commencement lump sum.

- Alternatively, where a member's benefits retrospectively changed, they could be prevented from reducing the cash lump sum already received at retirement. For members in this position the reformed scheme pension, if chosen, would be adjusted to allow for an amount of commutation (on the usual terms) at least equal to any automatic lump sum given up on account of the change to a previous legacy scheme award (plus any previous optional commutation).
- A.4 Any decision made by an existing pensioner would retrospectively apply back to the date of retirement and the member would forego the right to the benefits payable from the member's original scheme with respect to the remedy period, where relevant. Any back-payments now owed to the member would be paid in a single cash payment with interest applied.
- A.5 There might be situations in which a member chose a lower level of benefit than originally received. For example, they might have foregone their reformed scheme benefits for legacy scheme benefits in order to receive a higher lump sum, despite receiving a lower level of ongoing pension. Or, alternatively, the reverse situation might occur, whereby a member opted for a higher level of ongoing pension and a lower lump sum. Where a member made a choice that resulted in a lower level of benefit, then any overpayments would need to be repaid by the member in order to access their revised benefits. If such a member received an increased pension commencement lump sum, then it is proposed that this would be reduced by any pension overpayments owed. In other cases, the member would be given the opportunity to repay any overpayments upfront, or over time. This will be made clear to the member when they are making their choice. Interest would apply in all these scenarios.
- A.6 If the benefits a member has received change, then tax adjustments may be required. In these cases, the tax rules will apply to the facts of an individual's updated situation. In broad terms this means if income goes up, more tax may be owed, but if income goes down, then the individual may be owed a tax refund. Where tax is owed by the member, it would not be collected for periods beyond the usual statutory 4-year time limit.

Question 10:

Please set out any comments on our proposed method of revisiting past cases.

Member contributions

- A.7 Some schemes, primarily the police and firefighters' schemes, have different levels of member contributions, or different ways of calculating member contributions, between the legacy and reformed schemes. This means that if members choose to move from one scheme to another in accordance with the proposals set out above, there would need to be a

‘balancing payment’ (or ‘balancing refund’) in respect of their contributions to ensure the right level of contributions have been paid for the scheme benefits the member chose.

- A.8 Under the immediate choice option, information in relation to such payments/refunds would be provided to the member when making their decision shortly after 2022. Where a member owed contributions, they would be given the option to pay these upfront or over time. If the member had overpaid for the scheme they chose to be in, they would receive a taxable cash refund. Interest could be applied in both scenarios (see paragraphs A.63– A.65 below for more on interest).
- A.9 Under the DCU option, differences in employee contribution rates across schemes might be more complicated to rectify than under immediate choice, as it may not be known in the short term which set of benefits will ultimately be chosen. To address this, two-stage approach would be adopted. The first stage would occur shortly after the end of the remedy period and would involve retrospectively imposing a charge on all members by reference to their legacy scheme contributions. The second stage would then be at the point a member made their deferred choice (e.g. at retirement), where if reformed scheme benefits are chosen, the contributions that would have been due under the reformed scheme in the remedy period would be charged, again retrospectively.
- A.10 Whilst such an approach may result in some members’ contributions being amended twice, it ensures the correct level of contributions are ultimately charged for the set of benefits received, while treating members consistently at the earliest opportunity.
- A.11 Due to the nature of the employee contribution rates in the schemes for police and firefighters, either refunds or additional payments might be due at either stage, depending on the relevant legacy scheme. Stage one would only affect members who did not receive full transitional protection. Typically, it would result in refunds where the member joined the legacy scheme after 6 April 2006¹, with additional contributions being due if they joined before this date. Stage two would then impact members who chose reformed scheme benefits, and would generally result in additional contributions being due where the member joined the legacy scheme after 6 April 2006 and refunds if they joined before this date.
- A.12 At both stages, where a member owed contributions, they would be given the opportunity to pay these upfront, or over time through a repayment plan agreed with the scheme. If the member was due a refund this would be provided as cash. Interest could be applied in both scenarios (see paragraphs A.63 – A.65 below for more on interest).
- A.13 Adjustments to contributions, both at the end of the remedy period and at the point at which an individual receives their pension benefits, may result in tax adjustments. Further details are set out in Annex B.

¹ 6 April 2006 being the date on which new police and firefighters’ schemes were introduced, replacing the 1988 and 2007 schemes respectively.

Question 11:

Please provide any comments on the proposals set out above to ensure that correct member contributions are paid, in schemes where they differ between legacy and reformed schemes.

Voluntary member contributions

- A.14 All legacy and reformed schemes contain provisions, often differing, which allow members to make additional contributions to enhance their pension benefits. In older legacy schemes these had been added years (AY), but from around 2007 onwards this gradually changed to added pension (AP)¹. The main difference between AY and AP is that the former provides a pension amount that increases in line with the member's salary whilst in active service, whereas AP increases in line with inflation. In the reformed schemes covered by this consultation, AP is a feature of these schemes, as is faster accrual. All of these additional benefits increase a member's pension and the government's general approach means that it would be necessary to ensure the value of these benefits are reflected in the choice given to the member.
- A.15 Under both immediate choice and deferred choice underpin options all additional benefits purchased via voluntary member contributions in the remedy period could be converted to an equivalent value of AP in the scheme that the member is not currently in. This equivalent value of AP would only be added to the member's pension where they chose to join the alternative scheme design for the remedy period. If a member's original scheme design was chosen, then they would keep the additional benefit originally purchased. Some legacy schemes' regulations and administrative processes may need to be updated in order to provide for an AP facility.
- A.16 There is an overall limit on the total amount of AP that can be purchased per member. This varies between schemes and between scheme designs. Where the relevant limit was exceeded (possibly retrospectively) solely as a result of proposals to remedy the discrimination found in transitional protections, it is proposed that such breaches would be ignored.
- A.17 Some of the reformed schemes also include an option to buy-out some or all of the reduction to pension if benefits are taken before NPA. This is known as Effective Pension Age (EPA) in the reformed scheme for civil servants (Alpha), Early Retirement Reduction Buy Out (ERRBO) in the reformed Health and Social Care pension scheme and Buy Out in the reformed Teachers' pension scheme.
- A.18 Because of the nature of EPA and ERRBO-type arrangements, which are clearly related to the reformed scheme benefit design with a higher NPA, it

¹ The schemes for health service workers and teachers describe added pension as additional pension – the terms are interchangeable.

would not be possible to convert it into an equivalent value of AP in the legacy scheme. Members who are returned to the legacy scheme for the remedy period (under either IC or DCU) would therefore receive a refund of their contributions to such arrangements. A refund would void the EPA or ERRBO benefit even if reformed scheme benefits were ultimately chosen. Some workforces have agreements in place with employers to share the cost of EPA and ERRBO. In such situations, when receiving a refund, members would only be offered the full value of their own contributions, as they would no longer be providing for the early pension age for which they were specifically intended. Any refund of EPA or ERRBO voluntary member contributions would be taxable in the usual way. A refund would not be available for any other forms of voluntary member contribution. If a member later returns to the reformed scheme, the option to make additional contributions towards ERRBO/EPA will be open to them.

- A.19 It is the government's intention that the tax position in general for voluntary contributions, which will have usually received tax relief, should reflect an individual's updated situation in the usual way.
- A.20 Most public service schemes¹ also have separate money purchase (additional voluntary contribution) (MPAVC) schemes alongside the main scheme. MPAVC schemes permit members to pay additional contributions to build up a separate defined contribution pension pot with an external provider. These schemes are outside the scope of this consultation as they are unaffected by the litigation.

Question 12: Please provide any comments on the proposed treatment of voluntary member contributions that individuals have already made.

Annual benefit statements

- A.21 Section 14 of the Public Service Pensions Act (Northern Ireland) 2014 introduced a requirement for schemes to provide benefit information statements to active scheme members annually from 2015. These are more commonly known as "annual benefit statements" (ABSs). The detail of what an ABS must include are set out in Department of Finance directions (including information about legacy and reformed scheme benefits). ABSs also include other information provided for in legislation introduced by the Department for Communities (DfC)² which applies to all pension schemes.

¹ With the exception of schemes for firefighters and the devolved Judiciary.

² The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014 <https://www.legislation.gov.uk/nisr/2014/79/contents/made>

- A.22 ABSs currently include details of two sets of benefits for members who moved from the legacy to the reformed schemes¹ (covering the periods to 31 March 2015 and from 1 April 2015 respectively). If, as a result of this consultation, the immediate choice option is adopted then no changes to ABS contents would be required until after a member had exercised their choice. That would avoid any confusion for the member ahead of making their immediate choice.
- A.23 Under the DCU option, scheme administrators would be required to produce ABSs containing information on remedy period benefits under both the reformed and legacy scheme designs (as well as legacy scheme benefits for years of service before 2015; and reformed scheme benefits after 2022). This may require significant system changes and take some years to implement and test. It would also be complex for members, so careful consideration would be needed to ensure the content was as clear as possible.
- A.24 Members who are or may be subject to an annual allowance charge would require an accurate pension savings statement, setting out the value of their pension growth under the legacy and reformed scheme designs for the remedy period from an early stage. Schemes currently write each year to members who may be subject to an annual allowance charge based on their accrual in the scheme in question, to prompt them to consider their tax affairs. There are complexities related to a deferred choice underpin for this group of scheme members; these are set out more fully in Annex B.

Question 13:

Please set out any comments on our proposed treatment of annual benefit statements.

III health retirement (IHR)

- A.25 There are several categories of IHR cases, which include:
- members who had transitional protection and were accepted for IHR pension under their legacy scheme during the remedy period
 - members who had transitional protection and were rejected or not considered for IHR pension under their legacy scheme during the remedy period, including because they were over their legacy scheme NPA
 - members who did not have transitional protection and were accepted for IHR pension under their reformed scheme – these cases may

¹ This is to reflect the final salary link for the benefits earned under legacy schemes for those members moved to the reformed schemes in April 2015.

need to be reconsidered under legacy scheme IHR rules which are likely to differ

- members who did not have transitional protection and were rejected for IHR pension under their reformed scheme – these cases may need to be reconsidered under legacy scheme IHR rules which are likely to differ

A.26 Any member who was refused an IHR pension in one scheme may be eligible for IHR in their alternative scheme. This is a result of differing scheme rules and eligibility requirements. In particular, the later pension age in the reformed schemes may have led to some members being refused IHR because medical advisers deemed the member able to recover and return to work in the extended time period to the later pension age. Conversely, the later pension age also means that IHR – where granted under the reformed scheme – can be more valuable because the enhancements in respect of potential lost service are calculated to a later age in the reformed schemes. IHR cases involve members, employers, medical assessors and scheme administrators. Therefore, in order to reconsider a case, member consent would be required because of the likely need to share medical records and evidence.

A.27 A member in scope who had already retired on ill health grounds would be able to retrospectively choose the benefits in the alternative scheme if they wished. However, whether their alternative choice of benefit would also be an IHR benefit would depend on whether they would be accepted for IHR pension in the alternative scheme. For example, a member who was accepted for IHR pension in the legacy scheme would not automatically be accepted under the reformed scheme due to the later NPA, as mentioned above. If such a member was refused retirement on ill health grounds in the alternative scheme, their choice would be between their existing ill health benefit and the other pension benefit that would have been payable (at the age they retired) from the alternative scheme. This could be an actuarially reduced pension, or a deferred pension if the member is below their minimum pension age. Member consent might also be required in this situation, if medical advisers needed to revisit their assessment.

A.28 As with any cases involving post-award adjustments to benefits, there may be tax implications. In these cases, the tax rules will apply to the facts of an individual's updated situation. In broad terms this means if income goes up, more tax may be owed, but if income goes down, then the individual may be owed a tax refund. Where tax is owed by the member, it would not be collected for periods beyond the usual statutory 4-year time limit.

A.29 There may also need to be consideration of how state income-related welfare benefits should be treated when these have already been assessed and paid on the basis of the previous pension award already in payment. However, this applies to revised benefit awards of all types, not just those paid in relation to IHR.

A.30 As set out in paragraph 2.24 above, the intention will be to work with schemes to seek to offer reformed scheme members undergoing IHR a

choice of legacy or reformed scheme benefits at retirement, where this is administratively possible.

Question 14:

Please set out any comments on our proposed treatment of cases involving ill-health retirement.

Cases where members have died since 1 April 2015

- A.31 There will be a number of different circumstances in which some members within scope of the remedy will have died since 1 April 2015. These will include members in active service; deferred members and pensioners, including those who had received payments related to serious ill health conditions (life limiting illnesses) or who retired due to ill health.
- A.32 Such cases will need to be handled sensitively. Cases will need to be revisited to ensure that any increase to benefits arising from these changes due either to the member before their death, or their survivors, or to the member or their survivors' estates, can be paid. Where possible, these cases would be prioritised given the obvious need for grieving families to resolve financial matters relating to their loved one in as timely a manner as possible.
- A.33 There are options around how these cases could be dealt with, which largely would not differ under DCU or immediate choice. Where any increase in benefits was due, schemes could notify the individual who received any death lump sum payment (if that were a nominee, rather than the member's estate), survivors in receipt of ongoing pension payments, or a late member's legal personal representative (where no survivor pensions were in payment), and arrange to make the higher payment(s). These payments could relate to a pension the member was in receipt of before their death, to a death lump sum, or to any survivor pensions in payment. Alternatively, schemes could adopt a more complex approach and present survivors with the choice between two packages of benefits. This would be similar to the choice that the member would have been given had they still been alive; setting out the consequences of such a choice on payments already made to the member and/or their estate/survivors. The rationale behind offering such a choice stems from the fact that the reformed scheme may offer benefits not available in the legacy scheme; such as survivor pensions for unmarried partners.
- A.34 There are potential complications in cases where dependent children are in receipt of survivor pensions, but there is no adult survivor's pension in payment to the person responsible for the child or children. This could include situations in which there was an adult survivor's pension in payment to someone who was not the guardian of the dependent children.

- A.35 Legacy schemes generally include provision for spouses and civil partner's pensions, but some did not provide for unmarried partner's pensions (and even when they did, they might not cover all past service). This means that the choice between a legacy and reformed scheme could have significant implications for the pensions of any dependent children, as well as any surviving unmarried partner. Where a member of a legacy scheme was unmarried but had a partner who would qualify for a survivor pension under the reformed scheme, and that adult survivor pension was put into payment, it could impact the value of the pension or pensions paid to the dependent child or children.
- A.36 In such a situation, where the child and the adult newly receiving a survivor pension (or receiving an altered survivor pension which could also affect the child's pension) were not part of the same household, we would not propose to reduce any dependent child's pension. This is because of the potential financial impact of doing so on the child – and their parent or guardian's lack of control over the decision affecting the child's pension payment.
- A.37 If, however, dependent children were part of the same household as the person receiving the survivor's pension then the usual rules limiting the combined total of survivor and children's pensions would apply.
- A.38 An argument against permitting this kind of choice between a legacy scheme without unmarried partner benefits and a reformed scheme with such benefits could potentially be made in some schemes, where members have previously been given the option to move from a legacy scheme to another pre-2015 scheme which did offer survivor benefits to unmarried partners. Where a member has previously chosen to remain a member of a specific legacy scheme, there may be a question as to whether that choice should be respected and retained, particularly where the member had been with the unmarried partner at the time the earlier option was exercised.
- A.39 In cases where a deceased member (with no dependent children) was not in receipt of transitional protection there may be an unmarried partner pension in payment from the reformed scheme, which would not be payable from the legacy scheme. Presenting the surviving partner with a "choice" would seem pointless, since they may be choosing between continuing to receive a pension and receiving nothing. In such cases, it is therefore proposed that where no higher pension payment would be due to the survivor or to the deceased's estate, no contact should be made with the relevant parties.
- A.40 It is acknowledged that any reopening of a late member's estate once probate has been sought and granted in applicable cases, and any inheritance or other tax charges paid, is likely to be unwelcome and potentially distressing. Also, discretionary death lump sums paid to a nominee generally do not count towards the value of an estate, and discretionary death lump sums paid to an estate generally do not count for inheritance tax purposes. However, if there were arrears of continuing pension payable in respect of the deceased member those would be part of the estate. Any increase to a lump sum paid to a nominee, or to a survivor

pension in payment might impact the individual's personal tax position; or their entitlement to any income-related state benefits in payment.

- A.41 Any tax charges triggered solely as a result of payments related to McCloud remedy would not fall to the member or their survivors. Also, any additional out of pocket expenses incurred (for example, as a result of the reopening of a probate application) would be reimbursed where evidence of these was provided to the relevant scheme.
- A.42 The Department of Finance is working with schemes to consider how to prioritise cases where there is a need to do so.

Question 15:

Please set out any comments on our proposed treatment of cases where members have died since 1 April 2015.

Contingent decisions

- A.43 These include decisions that individuals took as a result of the (actual or perceived) implications of the introduction of the reformed schemes. These could include members choosing to opt out of the reformed schemes for various reasons, which will differ between individuals.
- A.44 Where members wished to argue that they would have taken a different course of action had they known that continued membership of their legacy scheme during the remedy period was an option, then schemes would consider representations on a case-by-case basis. Unwinding some of these contingent decisions would involve complex calculations, would be likely to require evidence from the member and possibly also their employer, and tax adjustments may also need to be made.
- A.45 If, under either IC or DCU, members wished to be treated as accruing benefits in their legacy scheme in relation to service in the remedy period, then payment of the correct employee and employer contributions would be required retrospectively, with appropriate interest, before the individual would be deemed to be eligible for remedy. Tax adjustments may also need to be made (see Annex B for more detail).
- A.46 Where a period of more than 5 years had elapsed since a member opted out of a final salary legacy scheme, they would usually lose their right to the "final salary link" (FSL) provided for by section 20 of the Public Service Pensions Act (Northern Ireland) 2014. The FSL allows members in the reformed schemes with final salary legacy scheme service to have those benefits calculated in line with their final salary when they retire (or otherwise leave the reformed scheme), rather than when they left the legacy scheme.

- A.47 Where a member, and their employer, paid contributions owed for the relevant period then any FSL would be restored.

Question 16:

Please set out any comments on our proposed treatment of individuals who would have acted differently had it not been for the discrimination identified by the Courts.

Voluntary pension transfers (public sector transfer club and non-club)

- A.48 All the schemes covered by this consultation are members of the Public Sector Transfer Club. The Club is an arrangement that facilitates the mobility of employment within the public sector by enabling employees to avoid the reduction in the value of their accrued pension that could otherwise occur as a result of changing employment. Final salary pension transferees are awarded a service credit that maintains the member's final salary link for the pension accrued in their previous service. CARE transferees are awarded a pension credit that continues the rate of in-service revaluation that was provided in the member's legacy scheme.
- A.49 The intention of the Club is that a member should not lose out as a result of changing employment within the public sector. Equally, the member should not receive benefits that are higher in value than if they had not changed employment.
- A.50 If a member transferred under the Club before having made a choice between legacy and reformed benefits (as would be the case under DCU, or under IC where the member transferred before that was implemented), then one option would be to bring forward that choice to the date of transfer so that only one set of scheme benefits for the remedy period needs to be considered for the transfer. This would simplify the Club administration as the scheme receiving the transfer would avoid having to maintain dual records of two transfer credits. However, this effectively means that the transferring member, even under the DCU option, is required to make an immediate choice at the point of transfer.
- A.51 There would, however, still need to be some retrospective application of this approach to cover transfers that had already been made. This would be more complex where a member had moved schemes multiple times.
- A.52 In addition, if the transfer took place before the end of the remedy period, the member would potentially have a further choice of benefits in their new employment if the scheme to which they had transferred was also covered by remedy. This could increase the complexity of the transfer administration and the choice that the member faced.

- A.53 This would be simplified by giving the member a single choice that covered their pension accrued in their old and new employment. A single choice is also closer to the situation of a member who did not change employment.
- A.54 In certain situations, a transferring member might be at an advantage if they could make two choices. For example, if they received a pay rise on promotion when they changed employment, they might be able to receive a higher pension than if they had not changed employment, by selecting final salary benefits for their old employment and CARE for their new employment.
- A.55 When transferring to a scheme within the Club, which is not affected by the McCloud judgment then members would be required to make their choice at point of transfer in any case. Such schemes do not generally offer CARE benefits¹, therefore this choice is likely to be between either final salary benefits within the Club or transferring CARE benefits outside of the Club (or retaining them as a deferred benefit if the scheme doesn't accept non-Club transfers).
- A.56 Under the DCU, or before an immediate choice was implemented, if a member opted to transfer their benefits outside of the Public Sector Transfer Club it is not expected that they would by then have made a choice between legacy and reformed scheme benefits for the remedy period. In such a situation the scheme would calculate two Cash Equivalent Transfer Values, one on each set of benefits, and pay across the higher of the two values.

Question 17:

If the DCU is taken forward, should the deferred choice be brought forward to the date of transfer for Club transfers?

Question 18:

Where the receiving Club scheme is one of those schemes in scope, should members then receive a choice in each scheme or a single choice that covers both schemes?

How should transfers to and from the LGPS(NI) be treated?

- A.57 The Local Government Pension Scheme in Northern Ireland is not in the scope of this consultation document. Its transitional protection takes the form of an underpin². The difference between the LGPS(NI) underpin and the choice being considered for other schemes in scope means that options for transfers between the LGPS(NI) and other schemes would be

¹ Except for public service schemes based in the Channel Islands.

² The underpin provides for a calculation of better of Final Salary or CARE terms for service before the date the new scheme began (depending on meeting certain criteria).

administered differently. This could be more complex for transfers taking place during the remedy period if the benefit type awarded in old and new employment were to be linked. This would be exacerbated if members did not make their choice at the point of transfer. The Department for Communities will consult on more detailed proposals on the LGPS(NI) underpin, and the proposed approach to transfers to/from the LGPS(NI), in due course.

Divorce cases

- A.58 Usually schemes calculate a cash equivalent transfer value (CETV) when requested for court proceedings in cases of divorce (marriage) or dissolution (civil partnership). Depending on the outcome of the divorce proceedings, schemes may create a pension account for the member's ex-spouse (who becomes a "pension credit member" of the scheme; the scheme member becomes a "pension debit member").
- A.59 Alternatively, if an "attachment order" is in place, the ex-spouse or civil partner does not become a member of the scheme but is instead entitled to a proportion of the pension when it comes into payment. In such cases, the ex-spouse or civil partner's pension amount will result from the choice exercised by the scheme member as to which scheme they would prefer for the remedy period.
- A.60 Any cases where a CETV has already been issued or which need a CETV before government decides which remedy option to implement, and before that remedy is legally effective, might well be subject to change. It is acknowledged that this is undesirable, and that it might affect decisions about the sharing and proportioning of assets in cases not yet settled.
- A.61 However, Pension Sharing Orders, specifying a percentage, rather than a cash amount, to be awarded to the member's ex-spouse or civil partner do permit adjustments to the pension credit (and debit) member's pension amount to reflect remedy, at the relevant point in time.
- A.62 Any immediate or deferred choice would be exercised by the scheme member (pension debit member), not the ex-spouse or civil partner (pension credit member), on the basis that the scheme member has been subjected to the discrimination so far identified by the Courts. This is subject to any Order from the courts directing otherwise. The pension credit member will be awarded the percentage (as specified by the courts) of the higher CETV due under remedy; this will not be changed to reflect any choice the scheme member (pension debit member) makes, which would result in a lower pension amount.

Question 19:

Please set out any comments on our proposed treatment of divorce cases.

Interest of under- or over-payments and refunds

- A.63 There is no consistent approach to interest across public service schemes. Some scheme regulations contain provisions relating to interest, some do not. In the latter schemes, interest is decided on a case-by-case basis. Across all schemes interest is sometimes provided for in decisions from the Pensions Ombudsman or higher Courts. Given the likely need (under both immediate choice or DCU) for retrospective adjustments to pensions in payment (or formerly in payment), to lump sums, to employee contributions and because members might be able to choose refunds of contributions – sometimes many years after a payment was originally made – it is acknowledged that it would be necessary to pay interest where the scheme was paying amounts of money to the member.
- A.64 Consideration will still need to be given to whether it is appropriate to charge interest where the member owed a debt to the scheme. In a case where employee contribution rates differ between legacy and reformed schemes, and a choice made under the DCU perhaps 30 years from now means that a member paid employee contributions at the ‘wrong’ (lower) rate during the remedy period, there is a question as to whether the member should be charged a rate of interest on the contributions owed. Theoretically the member who owed employee contributions could have invested the additional money needed for those contributions over time and earned interest on that investment; or spent it on items that they might otherwise not have been able to afford.
- A.65 In relation to appropriate rates of interest, one option is to set consistent rates across all schemes. These could be contained in scheme regulations to ensure consistency and transparency.

Question 20: Should interest be charged on amounts owed to schemes (such as member contributions) by members? If so, what rate would be appropriate?

Question 21: Should interest be paid on amounts owed to members by schemes? If so, what rate would be appropriate?

Question 22: If interest is applied, should existing scheme interest rates be used (where they exist), or would a single, consistent rate across schemes be more appropriate?

Abatement

- A.66 Abatement is the reduction or suspension of a pension in payment in the event of re-employment. Where abatement applies, and the post-retirement pension plus relevant earnings on re-employment exceed pre-retirement

salary, any excess will usually be deducted (abated) from the pension in payment.

- A.67 Provisions providing for abatement of pensions on re-employment exist in some older legacy schemes, but do not always apply to all pensions in payment; and in some legacy schemes usually only to some of those taken before Normal Pension Age. Abatement usually only applies to pensioners re-employed in the same sector (intra-service abatement). However, where there isn't fair and open competition before a pensioner is re-employed in another area of the public sector (inter-service abatement), pension or pay might be abated.
- A.68 Where the DCU or immediate choice resulted in a retrospective increase to a pension, which might mean that a pensioner's income from pension plus their earnings exceeded their pre-retirement earnings for the first time or by a greater amount, then abatement would not apply or would not be increased retrospectively.
- A.69 Where abatement applies in the legacy scheme, and a pension award already taken had been abated, but the member chose to move to the reformed scheme for the remedy period, the abatement calculation would need to be reviewed and adjusted as necessary from 1 April 2015 or the date the pension was awarded, if later. In some other cases, a reduction in legacy scheme pension (because service during the remedy period was instead treated as earned under the reformed scheme) might mean that a remaining legacy benefit entitlement was no longer abated.
- A.70 Benefits earned in reformed schemes are not subject to abatement.

Question 23: Please set out any comments on our proposed treatment of abatement.

Annex B

Pensions tax relief: implications of the options to remove unlawful discrimination

- B.1 Most active members will not experience any changes to their tax liability as a result of the measures to remove the discrimination outlined in Chapter 2. However, a small minority may experience tax impacts, either as a result of changes to employee pension contribution rates, or changes to pension accrual causing them to exceed limits on pension's tax relief. These impacts could be either positive (individuals will be able to reclaim any overpaid tax) or negative (for example where higher pension accrual means higher tax charges for exceeding pensions tax relief limits).
- B.2 This annex sets out how different aspects of the pension's tax regime operate, and what the implications may be for the small minority of members who are affected. Those implications differ under the immediate choice and deferred choice underpin (DCU) options, so this annex sets out how the tax system will apply to each option separately, after a brief overview of the key elements of pensions tax relief.

Pensions tax relief: tax relief on contributions, the annual allowance and the lifetime allowance

- B.3 Contributions to registered pension schemes receive tax relief at an individual's marginal rate. The majority of public service pension schemes are registered for tax purposes¹. This tax relief is limited in some circumstances, through the annual allowance and the lifetime allowance, so that it is more effectively targeted to encourage pension saving – see paragraphs B.5-B.8 below.
- B.4 For most public service pension schemes, the amounts of member contributions required under the legacy and the reformed schemes do not differ. This means that most members will have received the correct amount of tax relief on their member contributions. However, for some schemes, member contributions owed may differ between legacy and reformed schemes. In the main, this is the case for the police and firefighters'

¹ Exceptions are the legacy judicial schemes including JUPRA, FPJPS and JPS 1981 schemes for judges, (including some members of the devolved judiciary), which are not tax registered and to which members make contributions after tax. These schemes are outside of the scope of this consultation.

schemes, as highlighted in paragraph A.11 above. In these cases, if a member's pension benefits change for the remedy period, then their contributions will change, along with the tax relief on those contributions.

- B.5 The amount of tax-relieved pension savings that can be accrued in a year is limited by the annual allowance (AA). The standard AA is currently £40,000, but for those on the highest incomes, it tapers down to a minimum level of £10,000 from April 2016 to April 2020 and £4,000 from April 2020 onwards.
- B.6 For defined benefit pension schemes, liability for tax charges above the annual allowance is calculated using the value of pension accrued in a particular year. Where an individual's pension accrual in a single year exceeds the AA, then a tax charge may be due on the amount accrued above the AA¹. Therefore, for the small minority of individuals who may be liable for AA tax charges, a retrospective change in the value of pension benefits accrued for remedy period years could trigger an AA payment or adjustment.
- B.7 The amount someone can accrue in a registered pension scheme in a tax-efficient manner over their lifetime is limited by the pensions lifetime allowance. The lifetime allowance is £1,073,100 for 2020-21.
- B.8 If the value of an individual's pension accrued for the remedy period changes, then the total value of their pension over their lifetime will also change. This could have lifetime allowance charge implications, where the total value of their pension benefits is greater than the allowance.

Statutory time limit for reassessing tax in previous years

- B.9 There is a usual 4-year statutory time limit for reassessing tax for previous years. This means that where an individual's pension benefits change for past years, altering their tax position, HMRC can only collect tax where it is owed for the current tax year and the 4 full tax years immediately preceding the point at which the individual's benefits change.
- B.10 So, where an individual's benefits change so that additional tax is due for a tax year that ended more than 4 full tax years previously, HMRC cannot collect that additional tax.
- B.11 However, where an individual's change of benefits decreases their tax liabilities, then the government will compensate them for all years of the remedy period, regardless of the tax year the change in benefits relates to.

Tax implications of immediate choice

- B.12 Under immediate choice, an individual will be required to make an irrevocable choice about which pension benefits they have accrued during the remedy period. The government expects that most people will make

¹ Any excess over the annual allowance can be offset against unused allowances from the previous three years, so a tax charge will not always occur.

this choice probably within a year or two of the end of the remedy period. However, some of those retiring sooner may make it earlier.

- B.13 If the individual selects the benefits they have already been accruing during the remedy period, then there will be no tax changes – that member will already have received the right amount of tax relief. This means there would be no tax impacts for transitionally protected members who choose legacy scheme benefits, or for non-protected members who choose reformed scheme benefits.
- B.14 If the individual selects the benefits from the other scheme (so a protected member selects benefits from their reformed scheme or a non-protected member selects benefits from their legacy scheme), their pension benefits will change and there could therefore be changes to their tax position.
- B.15 The usual 4-year statutory time limit for reassessing tax will operate from the point at which an individual communicates their choice of benefits to their pension scheme. So, for example, an individual who elects in June 2023 to accrue legacy scheme benefits during the remedy period would need to pay any additional tax arising from an increase in pension accrual after 6 April 2019. They would not need to pay additional tax related to any increases in pension accrual before that date. However, they would be eligible for compensation for any tax they were owed as a result of lower pension accrual at any point in the remedy period.

Tax relief on contributions

- B.16 For members of schemes where contributions differ between legacy and reformed schemes, an adjustment will be made at the point at which the member makes their immediate choice¹. Contributions to these schemes are made tax-free, so this adjustment will have implications for an individual's tax position.
- B.17 Where individuals are owed a refund of contributions, the relevant amount will be returned to them and taxed as income with respect to the relevant past tax year. In line with the usual 4-year statutory time limit, tax will not be collected on returned contributions which relate to any years of the remedy period more than 4 full tax years before the point at which the choice is irrevocably made between pension benefits.
- B.18 Where individuals owe more in contributions, the additional contributions will benefit from tax relief at an individual's marginal rate in the year the contributions are paid, subject to the usual tax relief rules.

Annual allowance

- B.19 For a small minority of individuals with sufficiently high income and/or pension accrual, choosing different benefits to those already accrued for the remedy period will result in an adjustment in annual allowance charges.

¹ As set out in Annex A, where a member owes contributions they will be given the option to pay these upfront or over time. If a member has overpaid for the scheme they choose to be in, they will receive a cash refund.

This adjustment will be made at the point the individual makes their choice between pension benefits for the remedy period years.

- B.20** This reassessment will examine these individuals' AA positions for specific years of the remedy period. Individuals whose pension accrual has exceeded their AA or risks exceeding it will need to recalculate their annual allowance position for each year of the remedy period based on their new pension benefits for that year, using the relevant tax rate for that year and taking into account their carry forward position from previous years¹. They will then need to compare this revised charge to any annual allowance charge they have already paid for that year. This will establish whether, for each past year, they are owed a tax refund, or whether they could owe more tax. Individuals affected will need to report any changes within the statutory time limit to HMRC. Individuals may also need evidence of their tax position for earlier years to help them access the appropriate compensation.
- B.21** For some individuals who decide to receive legacy rather than reformed scheme benefits for the remedy period, or vice versa, their annual allowance charge liability might be greater under the benefits they now choose to receive. In these cases, the government will not collect additional tax relating to any years of the remedy period more than 4 full tax years before the point at which the choice is made between benefits. This is in line with the usual 4-year statutory time limit. But for individuals whose choice of different benefits for the remedy period reduces their AA liability, the government will refund the difference in charges due for every year of the remedy period – including the earlier years.
- B.22** Where additional tax is owed by the individual, they will have the opportunity to utilise Scheme Pays if they do not want to pay the tax charge upfront. If the individual is owed a tax refund or its equivalent and originally used Scheme Pays to meet the tax charge, then the associated pension debit will be amended as appropriate, and schemes will receive the refund.
- B.23** For members who may be subject to an annual allowance charge on the basis of their accrual in a particular public service pension scheme, that scheme will provide updated pension input amounts under the two sets of benefits, before members make their immediate choice. Individuals will need to consider this and may wish to consider taking advice on the tax implications, before making their decision.
- B.24** Once the choice of pension benefits for the remedy period has been made, any future changes in the value of those benefits (for example the revaluation of CARE benefits or earnings growth on final salary benefits) will be included in future annual pension accrual for tax calculations in the normal way.

¹ Individuals' carry forward positions will alter as a result of choosing different pension benefits for the remedy period. For remedy period years before the 4-year limit, individuals' carry forward positions will be unchanged, as these tax years are closed. However, where an individual would have had more unused carry forward based on the benefits they ultimately choose, the government will compensate them for any higher AA charges resulting from leaving their carry forward unchanged from before the 4-year limit. This also applies under the DCU.

Lifetime allowance

- B.25 Under immediate choice, the scheme benefits which contribute to calculating the lifetime allowance position will be those benefits which the individual has chosen to receive for the remedy period. This calculation will be done in the usual way when the individual receives their pension benefits, for example when they retire. Any tax owed by those with significant amounts of lifetime pensions savings will be paid at that point.

Tax implications of deferred choice underpin (DCU)

- B.26 Under the DCU, members will be deemed in 2022 to have been members of their legacy scheme for the remedy period. When the member takes their benefits, for example when they retire, they will have a choice about which set of benefits to take for the remedy period – either those from their legacy scheme or those from the reformed scheme.
- B.27 Where tax adjustments flow from individuals being deemed to have been members of their legacy scheme for the remedy period, the usual statutory 4-year time limit for reassessing tax will operate from 2022. For the minority of individuals for whom this change in accrual means more tax is owed, they will need to pay the additional tax due on increases to pension accrual arising in the current tax year and previous 4 full tax years. So, if scheme members are moved back into their legacy schemes on 1 April 2022, they must pay tax owed on accrual increases arising since 6 April 2017. They would not need to pay additional tax related to any increases in pension accrual before that date. For individuals for whom this change in pension accrual means lower tax charges, they will be eligible for compensation for any tax they are owed as a result of lower pension accrual at any point in the remedy period.
- B.28 Where tax adjustments are triggered by a member taking their benefits, the statutory 4-year time limit will operate from the point at which they communicate their choice of benefits to their pension scheme.

Tax relief on contributions

- B.29 For schemes where contributions differ between legacy and reformed schemes, the DCU option could result in an adjustment in contributions, and in tax relief owed on them, either at the end of the remedy period and/or at the point an individual receives their pension benefits.
- B.30 Where an individual's remedy period pension contributions change in 2022, as a result of being deemed to have been in their legacy scheme since 2015, then a tax adjustment will be required at this point. This will operate in the same way as under immediate choice. Tax relief will apply at an individual's marginal rate, subject to the usual tax relief rules, when they pay contributions to make up for any amount they owe. However, tax owed on any contributions repaid to the individual will only be collected for the current tax year and preceding 4 full tax years, in line with the usual statutory limit. It will be collected at the individual's marginal rate with respect to the year in which contributions are being corrected.

- B.31** When an individual retires or otherwise takes their pension benefits, a second adjustment may be required. If the individual opts to receive legacy scheme benefits no further adjustment to contributions will be required, and therefore no tax adjustment. But if the individual chooses reformed scheme benefits then a further adjustment of contributions owed will be necessary, with the corresponding adjustment in tax relief or tax owed. Tax relief will be given at an individual's marginal rate when they pay additional contributions. Where tax is owed due to a reduction in contributions, it will be collected for any remedy period years within the current tax year and the preceding 4 full tax years of an individual receiving their pension benefits, as under the usual statutory time limit.

Annual allowance

- B.32** Under the DCU, changes to pension accrued over the remedy period either in 2022 or at the point an individual receives their pension benefits might trigger an AA charge or adjustment for some individuals.

Adjustments in 2022

- B.33** For a minority of individuals there may be an annual allowance charge adjustment when the remedy period ends. At that point, all eligible members will be deemed to have been members of their legacy scheme for the remedy period, regardless of whether they had originally been transitionally protected or not. For those individuals who were protected in 2015, and consequently have accrued legacy scheme benefits since 2015, their pension benefits will remain unchanged and no annual allowance charge adjustment will be required. But for unprotected members, being deemed to have been members of their legacy scheme will retrospectively alter the pension benefits they have accrued over the remedy period.
- B.34** As under immediate choice, for a small minority with sufficient levels of income and/or pension accrual, this change could trigger an adjustment in liability for the AA charge. Where an individual's AA charge liability for remedy period years is reduced by being deemed to be in their legacy scheme, the government will refund the difference. If the individual originally used Scheme Pays to meet the tax charge, then the associated pension debit will be amended as appropriate, and schemes will receive the refund. In a very small number of cases an individual's AA charge liability may be higher following the change. In this case, their tax position for the current tax year and the previous 4 full tax years will need to be corrected, and they will need to pay the tax owed for those years to HMRC. Such members will have the opportunity to utilise Scheme Pays if they do not want to pay the tax charge upfront.
- B.35** As under immediate choice, in order to establish whether individuals owe tax or are owed a refund or compensation, the small minority paying or at risk of paying AA charges will need to recalculate their annual allowance position for each individual year of the remedy period, taking into account

their tax rate and carry forward position for each year¹. Any changes within the statutory time limit will need to be reported to HMRC. Individuals may also need evidence of their tax position for earlier years to help them access the appropriate compensation.

- B.36** From 2022 onwards, under the DCU, the member's annual allowance position will be calculated on the basis of their entitlement to legacy scheme benefits for the remedy period, until the member takes their pension benefits.

Adjustments when an individual receives their pension benefits

- B.37** When the member takes their benefits, for example when they retire, if they decide to take legacy scheme benefits for the remedy period years their pension benefits will remain unchanged, and there will be no further adjustment for annual allowance purposes. However, if they choose at that point to receive reformed scheme benefits for the remedy period years, then the value of their pension accrual for the remedy years could change significantly. Any increase resulting from their choice would all occur in the single tax year at the point the member chooses which benefits to take. This could trigger an AA liability in that year. That liability could be significant, and, because it is concentrated in one year, it could be greater than the total AA liability that individual might have faced had their pension benefits for the remedy period always been the reformed scheme benefits. This is because many of these members would either not have faced an AA charge, or their AA liabilities would have been smaller, had they always been considered to accrue benefits in the reformed scheme. In that case, the increase in pension value would have been more evenly spread over the whole remedy period rather than in just one year, and greater use could have been made of the annual allowance itself and the 3 year carry forward rule.

- B.38** As these effects are a direct consequence of the design of the DCU option, the government considers that it would not be fair to expect individuals to pay a potentially significant annual allowance charge that could result. The government will therefore compensate individuals for the difference in their annual allowance charge liability for reformed scheme benefits above legacy scheme benefits for the remedy period years, for the year in which individuals take their pension benefits. The government is developing a process whereby the public service pension scheme can declare and pay the relevant AA charge relating to the choice of reformed scheme benefits in the remedy period on the member's behalf. Therefore, while the member's choice of pension benefits could generate this specific AA charge, they would not need to do anything. However, members would still be liable to report and pay AA charges incurred for any other reason.

¹ For remedy period years before the 4-year limit, individuals' carry forward positions will be unchanged, as these tax years are closed. However, where an individual would otherwise have had more unused carry forward on the basis of receiving legacy benefits since 2015, the government will compensate them for any higher AA charges which result from leaving their carry forward unchanged from before the 4-year limit

Lifetime allowance

- B.39 An individual's lifetime allowance position is calculated when they receive their pension benefits, for example when they retire. Under the DCU, the lifetime allowance calculation will be based on the benefits the member has selected for the remedy period, either legacy scheme or reformed scheme benefits.

Understanding the likely AA impacts on members

- B.40 An individual's AA position depends on a range of factors that are specific to them. These include, for example, their salary and length of service. Their AA liability also depends on whether they have any other pension besides their public service pension, and their total income including any income separate to their public service salary. Consequently, it is not possible to give firm assessments of which, and how many, scheme members will be affected by AA adjustments resulting from immediate choice or the DCU. Circumstances also differ between workforces, given each workforce's legacy and reformed schemes have their own particular characteristics. In the broadest terms, it might be expected that those with high but fairly steady public service salaries might see lower AA liability in the legacy compared to reformed schemes. But individuals who experience very significant pay rises could pay higher AA charges under legacy schemes, although this requires very particular circumstances around length of service and salary levels to be the case. Workforces whose legacy schemes involve double accrual may also, at higher salary levels, see higher AA liabilities for legacy rather than reformed schemes.
- B.41 Overall, the government does not expect the AA, or adjustments to the AA tax liability, to be a relevant factor for the vast majority of scheme members who are within the scope of this consultation. However, those scheme members who think they may be liable for AA charges given their levels of income or pension accrual may want to take the taxation of immediate choice and DCU into account when responding to this consultation with their preferences between the two options.

Question 24: Please set out any comments on the interaction of the proposals in this consultation with the tax system

Annex C

Member examples

This annex provides further examples, which have been provided by the Government Actuary's Department, to illustrate the choice of benefits available to members. These examples highlight some (but not all) factors which may impact which scheme is better for certain members.

These examples are:

- 1 A nurse in the HSC (Health and Social Care) Pension Scheme (2015 scheme and 2008 section)
- 2 A teacher in the NI Teachers' Pension Scheme (NPA 60 section)
- 3 A teacher in the NI Teachers' Pension Scheme (2015 scheme and NPA 65 section)
- 4 A civil servant Administrative Officer in the Civil Service Pension Scheme (Alpha and Premium section of PCSPS(NI))
- 5 A police constable in the Police Scheme (2015 scheme and 1988 section)

All examples rely on the following assumptions:

- the pension calculated is the pension accrued over the remedy period (1 April 2015 to 31 March 2022), as payable at retirement. In practice, such members will also have pension relating to pre-2015 and post-2022 periods, which is not considered here
- after the remedy period, the member continues in active service until they retire
- inflation reflects actual experience up to 2020, with 2% per year assumed thereafter
- for simplicity, the salary increase in each of the examples is the same rate for every year since 2015, in practice this will not be the case
- salary increases, promotions and retirements occur on 31 March in the relevant year
- the current State Pension age timetable is followed
- the pension amounts are in nominal terms at retirement
- the amounts are shown rounded to the nearest £10

Please note that these examples are for illustrative purposes only. Generally, they only consider one of the key variables which may impact the choice the member faces, in practice other variables may also be significant. The choice of

benefits will depend on individual circumstances and these examples should not be used to inform that choice. The comparisons are based on the pension payable at retirement, however in practice there are also other differences in benefits, such as survivor's pension, which may influence a members decision.

Example 1

A nurse who is a member of the **HSC Pension Scheme** (2015 scheme and 2008 section).

In **2012 they were 45**, and so **did not receive transitional protection**. However, they will now be given a **choice of pension for their service over the remedy period**, of either:

Legacy scheme (2008 section)	Reformed scheme
1/60 th of final salary each year Optional lump sum Payable unreduced from age 65	1/54 th of revalued salary each year Optional lump sum Payable unreduced from State Pension age (age 67)

If they had a **salary of £30,000 in 2015**, experience future annual **salary increases of 1% above inflation** and **retire at 65**, their choice with respect to the remedy period will be between the following pension amounts at retirement:

Legacy scheme: £5,450 pa	Reformed scheme: £6,040 pa
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Assuming they choose to not give up any pension for a lump sum and allowing for the reformed benefits being reduced for early retirement.

This means they would likely be **better off receiving reformed scheme benefits**.

Alternatively,

If the member was promoted twice, receiving **an additional 10% salary increase** at the end of the remedy period **and an additional 5% salary increase** five years later, their choice if retiring at age 65 now becomes either:

Legacy scheme: £6,270 pa	Reformed scheme: £6,040 pa
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This means they would likely be **better off receiving legacy scheme benefits**. Therefore, in this example, a change in future career progression has changed which scheme is expected to be more beneficial.

Example 2

A teacher who is a member of the NI Teachers' Pension Scheme (Normal Pension Age 60 section).

In 2012 they were 50, and so received transitional protection. However, they will now be given a choice of pension for their service over the remedy period, of either:

Legacy scheme (NPA 60)		Reformed scheme
1/80 th of final salary each year Automatic lump sum (3x pension) Payable unreduced from age 60	or	1/57 th of revalued salary each year Optional lump sum Payable unreduced from State Pension age (age 67)

If they had a salary of £40,000 in 2015, experience future annual salary increases of 2% above inflation and retire at their state pension age (67), their choice with respect to the remedy period will be between the following pension amounts at retirement:

Legacy scheme: £5,710 pa (+ £17,130 lump sum)	or	Reformed scheme: £6,570 pa (+ £17,130 lump sum)
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Assuming, for ease of comparison, that under the reformed scheme benefits, they would choose to give up pension for a lump sum equivalent to that they would have automatically received under the legacy scheme.

This means they would likely be **better off receiving reformed scheme benefits**.

Alternatively,

If the member chose to retire aged 60, then their final salary would be lower and the reformed scheme benefits would be reduced for early retirement. Their choice is now:

Legacy scheme: £4,340 pa (+ £13,020 lump sum)	or	Reformed scheme: £3,490 pa (+ £13,020 lump sum)
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This means they would likely be **better off receiving legacy scheme benefits**. Therefore, in this example, a change in retirement age has changed which scheme is expected to be more beneficial.

Example 3

A teacher who is a member of the NI Teachers' Pension Scheme (2015 scheme and Normal Pension Age 65 section).

In 2012 they were 50, and so did not receive transitional protection¹. However, they will now be given a choice of pension for their service over the remedy period, of either:

Legacy scheme (NPA 65)		Reformed scheme
1/60 th of final salary each year Optional lump sum Payable unreduced from age 65	or	1/57 th of revalued salary each year Optional lump sum Payable unreduced from State Pension age (age 67)

If they had a salary of £40,000 in 2015, experience future annual salary increases of 2% above inflation and retire at their state pension age (67), their choice with respect to the remedy period will be between the following pension amounts at retirement:

Legacy scheme: £8,160 pa	or	Reformed scheme: £8,000 pa
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Assuming they choose not to give up any pension for a lump sum and allowing for the legacy scheme benefits being increased for later retirement.

This means they would likely be **better off receiving legacy scheme benefits**, although the outcomes are quite similar. This differs from the equivalent member in the NPA 60 section (Example 2), primarily because pension are increased for late payment in the NPA 65 section but not in the NPA 60 section.

Alternatively,

If the member chose to retire aged 65, then their final salary would be lower, reformed scheme benefits would be reduced for the early retirement and legacy scheme benefits would not be increased for late payments. Their choice is now:

Legacy scheme: £7,050 pa	or	Reformed scheme: £7,010 pa
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This means again that they would likely be marginally **better off receiving legacy scheme benefits**. Unlike the NPA 60 section (as set out in Example 2), **expected retirement age** for the NPA 65 section has minimal impact on the relative difference in pension amounts between schemes.

¹ Despite being the same age, this member did not receive transitional protection like the member in Example 2 did, due to their later normal pension age of 65.

Example 4

A **civil servant Administrative Officer** who is a member of the **Civil Service Pension Scheme** (Alpha and Premium section of PCSPS(NI)).

In **2012 they were 25**, and so **did not receive transitional protection**. However, they will now be given a **choice of pension for their service over the remedy period**, of either:

Legacy scheme (Premium section)	or	Reformed scheme (Alpha)
1/60 th of final salary each year Optional lump sum Payable unreduced from age 60		2.32% of revalued salary each year Optional lump sum Payable unreduced from State Pension age (age 68)

If they had a **salary of £20,000 in 2015**, experience future annual **salary increases of 2% above inflation** and **retire at their state pension age (68)**, their choice with respect to the remedy period will be between the following pension amounts at retirement:

Legacy scheme: £10,560 pa	or	Reformed scheme: £7,460 pa
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Assuming they choose to not give up any pension for a lump sum.

This means they would likely be **better off receiving legacy scheme benefits**.

Alternatively,

If the member experienced future **salary increases of 0.75% above inflation**, then their choice if retiring at age 68 now becomes, either:

Legacy scheme: £6,590 pa	or	Reformed scheme: £7,190 pa
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This means they would likely be **better off receiving reformed scheme benefits**.

However, if they instead **retire aged 60**, they would likely be **better off instead receiving legacy scheme benefits** as the reformed scheme pension would be reduced for early payment.

This demonstrates that a change in future salary increases and/or retirement age can change which scheme is expected to be more beneficial.

Example 5

A **police constable** who is a member of the **Police scheme** (2015 scheme and 1988 section).

In **2012 they were 35**, and so **did not receive transitional protection**. However, they will now be given a **choice of pension for their service over the remedy period**, of either:

Legacy scheme (1988 section)	or	Reformed scheme
1/60 th of final salary each year for first 20 years, then 2/60 th for next 10 years* Optional lump sum Payable unreduced from age 55 or earlier depending on service		1/55.3 of revalued salary each year Optional lump sum Payable unreduced from age 60

*In practice, a member who has 30 years' service (including in the reformed scheme) will have earned 1/45th of final salary each year under the legacy scheme.

If they had a **salary of £30,000 in 2015**, experience future annual **salary increases of 2% above inflation** and **retire at 55**, their choice with respect to the remedy period will be between the following pension amounts at retirement:

Legacy scheme:	or	Reformed scheme:
£8,570 pa		£5,190 pa

Assuming they choose to not give up any pension for a lump sum and allowing for the reformed scheme benefits being reduced for early retirement.

This means they would likely be **better off receiving legacy scheme benefits**.

Alternatively,

If the member experienced future **salary increases of 1% above inflation**. Their choice now becomes, either:

Legacy scheme:	or	Reformed scheme:
£7,340 pa		£5,040 pa

This means again they would likely be **better off receiving legacy scheme benefits**.

Even at lower levels of future salary increases the legacy scheme pension is still comfortably higher than the reformed scheme pension.

Annex D

Glossary of terms

Abatement - The reduction or suspension of a pension in payment. Where abatement applies and post-retirement pension plus relevant earnings exceed pre-retirement salary, any excess will be deducted (abated) from the pension in payment.

Accrual rate – This rate is set out in a pension scheme’s regulations and determines how quickly a member’s pension grows. Most are written in the form of $1/n$ (where n is a figure such as 50 or 60) multiplied by pensionable pay and in those cases the smaller the rate, the more valuable it is. However, some are expressed as percentages of pensionable pay, such as 1.6% or 2.0%, where the higher the percentage the more valuable it is.

Active member - Members who are working (in pensionable service) and accruing additional pension benefits from that work and from contributions paid by their employer on their behalf. The member is also making contributions.

Actuarial valuation - A report of the financial position of a defined benefit pension scheme carried out by an actuary at regular intervals. The valuation report typically sets out the scheme’s assets and liabilities as at the date of the valuation; the rate at which the sponsoring employer(s) must contribute to meet the liabilities accruing as they become due; and the additional rate at which the employer(s) must contribute to eradicate any deficit (the excess of liabilities over assets) within a stated time period.

Added or additional pension (AP) - Available in some legacy and reformed schemes allowing members to purchase additional amounts of pension (employers can also contribute as well as or on behalf of the member).

Added years (AY) - Contracts available in some legacy schemes allowing members to purchase additional years of service.

Annual allowance - A limit on an individual’s annual tax-relieved pension accrual. The standard allowance is £40,000 for most people but is subject to a tapered reduction for those on the highest incomes. Further information can be found at <https://www.gov.uk/tax-on-your-private-pension/annual-allowance>.

Annual allowance charge - The tax charged at an individual’s marginal rate of income tax on pension accrual above the annual allowance.

Annual Benefit Statements - The statement which members receive each year telling them how much their pension is worth.

Career Average Revalued Earnings (CARE) Scheme - A defined benefit pension scheme that gives individuals a pension based on a percentage of the salary

earned in each year of their working life. The annual “pot” is increased each year by a particular revaluation factor applied in that scheme.

Cash Equivalent Transfer Value (CETV) - A value placed on accrued pension rights in particular circumstances, such as when any worker ceases to be an active member of a scheme before pension is payable and wishes to transfer those pension rights to certain types of other pension scheme such as a private sector defined benefit scheme. Everyone can request a CETV except in the year before retirement, but schemes can refuse to accept them.

(The) Commission - The Independent Public Service Pensions Commission led by Lord Hutton of Furness from 2010 – 2011.

Commutation - Optional conversion of continuing pension into lump sum at a conversion rate offered by the pension scheme for that particular type of commutation of continuing benefit into lump sum. Reverse commutation is where some or all of a separately accruing pension lump sum can be converted into a continuing pension.

Consumer Prices Index (CPI) - An official measure of the cost of inflation, increasingly used for government purposes in recent decades. It examines some of the same things as RPI did, such as the weighted average of prices of a basket of consumer goods and services, such as transportation, food, and medical care. CPI has been regarded as more accurately measuring changes in overall prices than RPI.

Dashboards - Proposed online systems to allow pension scheme members to see all their pensions in one place. The government is legislating to establish pension dashboards in the Pension Schemes Bill, which is currently before the Westminster Parliament.

Deferred choice underpin (DCU) - One of the options for removing unlawful discrimination identified by the Courts. Formerly unprotected members would be returned to their legacy scheme for the remedy period (2015 – 2022). At the point benefits are payable they would be able to choose legacy or reformed scheme benefits for the remedy period.

Deferred member - A member who has stopped accruing extra benefits in their scheme, for example, after leaving employment covered by that scheme, or opting out of the scheme. No pension benefits have yet come into payment for the member from the scheme and the pension previously accrued is called a deferred or preserved pension.

Defined Benefit (DB) pension scheme - A pension scheme where the pension is related to the members’ salary or some other value fixed in advance.

Defined Contribution (DC) pension scheme - A scheme where the individual receives a pension based on the contributions made and the investment return that those contributions have produced. These are sometimes referred to as money purchase schemes.

Early retirement reduction buy out (ERRBO) - In the HSC Pension Scheme 2015, the method of a member and/or their employer paying additional contributions to buy out the actuarial reduction applied when a member retires earlier than their Normal Pension Age.

Effective pension age (EPA) - As per ERRBO above – but this relates to the 2015 pension scheme for civil servants (and others) (“Alpha”).

Employer Contribution Rates - The percentage of the salary of employees that employers pay as a contribution towards the employees’ pension.

Final salary scheme - A type of DB scheme that gives individuals a pension based on the number of years of pensionable service, the accrual rate and final salary as defined by the scheme.

Government Actuary’s Department (GAD) - A government department responsible for providing actuarial advice to public sector clients.

Guaranteed minimum pensions (GMP) - The minimum pension that occupational pension schemes have to provide for those employees who were contracted out of the State Earnings-Related Pension Scheme between 6 April 1978 and 5 April 1997.

Hutton report - The report(s) from The Independent Public Service Pensions Commission, led by Lord Hutton of Furness from 2010–2011.

Ill health retirement - A type of pension available to a member who meets the relevant test in scheme regulations when they are unable to continue working due to ill health.

Immediate choice - One of the options for removing unlawful discrimination identified by the court. Members would be asked which scheme they want to be a member of for the remedy period, shortly after 2022.

Indexation - Indexation is a technique to adjust pension payments by means of an index. It most often refers to the indexation of pensions in payment in line with a prices index in order to maintain the purchasing power of the pension after inflation.

Independent Public Service Pensions Commission - The independent commission undertaking a fundamental structural review of public service pension provision which commenced in 2010 and issued its final report in 2011. It was led by Lord Hutton of Furness.

Legacy scheme - The public service pension schemes members were in prior to 1 April 2015.

Life expectancy - Life expectancy at a given age, x , is the average number of years that a male or female aged x might be expected to live thereafter.

Lifetime allowance - A limit on the total amount of tax-relieved pension accrual an individual can have without incurring a lifetime allowance charge. Further information can be found at <https://www.gov.uk/tax-on-your-private-pension/lifetime-allowance>.

Lifetime allowance charge - The tax charged on an individual’s total pension accrual above the value of the lifetime allowance. An individual can either take this excess as a lump sum, in which case it is subject to a 55% tax charge, or as a regular pension payment, in which case the excess is subject to a 25% tax charge plus marginal rate income tax upon receipt.

Longevity - The length or duration of human life.

Lump sum - A specific payment made in respect of a member's pension rights. It can be an optional or mandatory pension lump sum payable to a member when a continuing retirement pension is brought into payment (often referred to as a pension commencement lump sum (PCLS)). Other lump sums are payable in respect of events such as death.

Member contributions - The percentage of their pensionable pay paid by active scheme members into their pension schemes.

Minimum Pension Age (MPA) - The earliest age at which ordinary retirement benefits can be brought into payment for a member under the rules of that scheme, and subject to tax limits. Ill health and survivor pensions are not subject to MPAs.

Money Purchase Additional Voluntary Contribution (AVC) - These are personal pension (money purchase) contributions made by someone who is also a member of an occupational scheme as a top-up to their occupational entitlement. These are defined contribution pensions.

New fair deal - HMT guidance on pension provision for workers whose employment is compulsorily transferred to the private sector when the services they work on are moved to private sector suppliers.

Normal Pension Age (NPA) - The age at which a pension scheme member can start taking pension benefits on a voluntary basis without any reductions. NPA is set in scheme rules. A member can retire voluntarily before NPA, as long as they are over their MPA, but will then face a reduction to their benefits.

Occupational pension - A pension, which is provided via the employer. It can be an unfunded arrangement in the public sector, where the pension promises are guaranteed under statute and there is no specific pot of assets allocated to meet the pension promises. However, in some of the public sector and in the private sector the pension scheme has to be legally separate from the employer, and backed by a specific pot of assets, and usually takes the form of a trust arrangement.

Pension credit - The main income-related social security benefit for pensioners, which combines the Guarantee Credit and the Savings Credit.

Pension Input Amount - The amount of an individual's annual pension accrual that is tested against the annual allowance to determine whether that individual is required to pay an annual allowance charge.

Pensioner member - Individuals who are drawing a pension and who are mainly former employees. However, they may also include widows, widowers and other dependants of former active members.

Public Sector Transfer Club - A group of some 120 salary related occupational pension schemes. It allows easier movement of staff mainly within the public sector. It does this by making sure that employees receive broadly equivalent credits when they transfer their pensionable service to their new scheme regardless of any increase in salary when they move to their new employment.

Public service pension schemes - Pension schemes authorised by statute where the relevant ministers or officials make the rules of the schemes. The main schemes are those for civil servants, health service employees, teachers, local government employees, the police and firefighters.

Reformed scheme(s) - The reformed public service pension schemes introduced under the Public Service Pensions Act (Northern Ireland) 2014.

Remedy period - The period covered by the proposals in Chapter 2, that is 1 April 2015 – 31 March 2022.

Remuneration - The combined value of pay, pensions and other benefits that can be given a monetary value.

Retail Prices Index (RPI) - The old measurement of inflation but still published as it continues to be used to calculate price increases and indexation for certain purposes. Like CPI, RPI tracks changes in the cost of a fixed basket of goods over time, but the basket differs from CPI, as has the method of assessing overall inflation.

Scheme Pays - An arrangement that can be used in certain circumstances where an individual's annual allowance charge is paid by their scheme and the individual's pension benefits are reduced appropriately to reflect this.

State Pension age (SPA) - The age at which an individual can begin claiming their state pension. The ages vary between individuals with different birthdays.

Survivor benefits - When an active or pensioner member dies, each scheme has a range of benefits that dependent children, a spouse, civil partner and sometimes an unmarried partner may receive instead. These vary across schemes.

Tapered protection - Offered to members between 10 and 13.5 or 14 years of Normal Pension Age on 31 March 2012, meaning they could stay in their existing schemes for a period ranging from a few months to several years after 2015. As with transitional protection, this was found to be unlawful discrimination by the Courts.

The Pensions Regulator (tPR) – A non-departmental public body and the UK's regulator of workplace pension schemes. It aims to ensure that workplace pension schemes (including public service schemes) are run properly so that people can save safely for their later years.

Transitional protection – Given to members within 10 years of Normal Pension Age on 31 March 2012, it meant they remained in their existing (legacy) scheme. This was found to be unlawful discrimination by the courts.

Unprotected members – All members who were moved to the reformed schemes on 1 April 2015, or anyone who first joined their pension scheme after 1 April 2015 and therefore entered the reformed schemes.