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Dear Jim,

PUBLIC SERVICE PENSION SCHEMES: CHANGES TO THE TRANSITIONAL ARRANGEMENTS TO THE 2015 SCHEMES

The Department wrote to the Committee on 19 August 2020 on the commencement of the above consultation. The Committee has requested that officials attend its meeting on 4 November to provide further evidence on this matter.

The officials attending the evidence session on 4 November 2020 will be Grace Nesbitt, Director of Pensions Division and Blathnaid Smyth, Head of Public Service Pensions Policy and Legislation Branch; both officials currently plan to attend in person.

In advance of the meeting a further briefing paper on the consultation is attached as requested (**ANNEX**).

You will wish to bring this update to the attention of the Committee.

Yours sincerely

Ciara McKay

**CIARA MCKAY
DEPARTMENTAL ASSEMBLY LIAISON OFFICER**

CONSULTATION ON PROPOSED CHANGES TO THE TRANSITIONAL ARRANGEMENTS TO THE 2015 PUBLIC SERVICE PENSION SCHEMES

Overview

The Department is consulting on proposed changes to 2015 reformed public service pension schemes. Changes are required to remove unlawful discrimination identified by the courts in transitional arrangements which allowed members closest to retirement to remain in the pre-2015 schemes from 1 April 2015. Any delay in developing and implementing arrangements to address this discrimination carries significant risk of further legal challenge.

The consultation invites views on options for scheme members to choose to have pension entitlements during the period discrimination has occurred, calculated under either the 2015 reformed scheme rules or those for the pre-reformed (legacy) schemes.

The consultation commenced on 19 August 2020 and will close on 18 November 2020. Following the consultation legislation will be required to amend the Public Service Pensions Act (Northern Ireland) 2014. Changes to scheme rules in secondary legislation will also be necessary.

Extensive changes to IT systems and communications to members will be required to implement a final remedy solution and an increased administrative resource requirement is anticipated across schemes.

Background

On 1 April 2015 reformed public service pension schemes were introduced under the Public Service Pensions Act (Northern Ireland) 2014. The reforms replaced final salary schemes with career average 'CARE' schemes with revised normal pension ages. In most schemes normal pension age was linked to State Pension Age. The reforms also included 'transitional protection' measures which in most schemes, allowed individuals within 10 years of retirement to remain in the unreformed (legacy) pension schemes. The rationale for this approach was to provide protection and certainty for this cohort which had least time to adjust to the reforms.

In December 2018 the Court of Appeal in England and Wales Courts ruled the transitional protection measures provided to some members in public service schemes in England and Wales discriminated unlawfully against younger members in the same schemes who did not receive the protection and must now be remedied. The equivalent devolved schemes contain the same age-based transitional protections and legal advice confirms a requirement to similarly remedy the discrimination that has occurred in schemes here since 2015, and to remove it for the future.

Consultation proposal

The consultation document contains proposals to remedy the discrimination which has occurred since 1 April 2015, and remove it from scheme design for the future, ensuring all members will be treated equally and fairly, in line with the findings of the courts, and regardless of their age.

In order to remedy the discrimination that has occurred since 1 April 2015 individuals in scope will be provided with a choice to have their pension entitlements in the period 1 April 2015 to 31 March 2022 (the remedy period) calculated under either the reformed, or the legacy (pre-1 April 2015) scheme rules. This will enable individuals to make an informed decision about which scheme provides the most appropriate benefit package for their remedy period service, as if the discrimination had not occurred. To remove discrimination for the future all active members will now accrue future service in the same way in the reformed schemes from 1 April 2022.

The consultation proposes two options for when the member's choice on how to have their pension entitlements in the remedy period calculated is made. The two possible approaches are:

- I) an immediate choice, made in the years immediately after policy implementation in 2022 or,
- II) a deferred choice made at the point at which the member retires or takes their pension benefits.

These policy proposals have been developed in a UK wide pensions forum with contribution from employer and employee representatives for the NI schemes progressed at the interdepartmental pension policy forums co-ordinated by the Department of Finance. The consultation document now invites wider comment on the viability and desirability of remedy options. Through consultation the Department is seeking to explore and understand differing views and relevant issues for affected members, in order to ensure that the final policy solution has taken account of all these matters.

Scope of consultation

Schemes in scope of the consultation are those established under the Public Service Pensions Act (Northern Ireland) 2014 for: Civil Servants; members of the Police Service; Teachers; Health Service Workers; and Firefighters. Due to differences in the way transitional protection was provided in the Northern Ireland Local Government Pension Scheme (LGPS(NI)), 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.

The proposed changes will affect public service scheme members who were in scope of the original policy, i.e. in service on 31 March 2012 and have service in the remedy period between 1 April 2015 and 31 March 2022. Over 130,000 individuals are in scope of the action to remove the discrimination since 2015. Under the proposed approach, all individuals in scope will be able to receive the benefits to which they are entitled, whether they are active, deferred or pensioner members, and regardless of whether they have lodged a legal claim or not. There are currently over 1,300 legal cases in NI which are pending the outcome of this matter.

Equality screening

The department has undertaken an equality screening exercise in respect of the proposals to revise the policy on transitional protections. The revised policy is targeted to remove an existing unlawful inequality as determined by the courts. There are no adverse differential impacts for the section 75 groupings. The equality screening document is published on the Departmental website at:

www.finance-ni.gov.uk/consultations/consultation-proposed-changes-transitional-arrangements-2015-schemes

Position in Britain

A Treasury consultation for the comparable schemes established under Westminster legislation has now concluded. A Treasury consultation response has yet to be published.

Department of Finance officials have worked closely with the Treasury in the development of a core policy proposal which can address the issue of discrimination as it applies across all affected schemes. Given the analogous nature of provision between public service pension scheme design here and in Britain a conjoined policy response to legal challenge against similar schemes is often appropriate. Consequently the proposals in this consultation mirror those in the comparable Treasury consultation.

Consultation arrangements

The consultation will run until 18 November 2020. The consultation document and details on how to respond have been published on the Department of Finance website at:

www.finance-ni.gov.uk/consultations/consultation-proposed-changes-transitional-arrangements-2015-schemes

Employer and Employee representatives for the devolved public service pension schemes have been alerted to these arrangements and asked to bring the consultation to the attention of scheme members and wider stakeholders connected to their scheme. The minister of Finance has written to Ministerial Colleagues to notify them of the consultation.

Consultation responses

To date 108 responses to the consultation have been received, mainly from private individuals who are members of the schemes within scope. Two responses have been received from individual unions representing teachers, however the main trade unions which represent the majority of public servants have yet to submit their views in writing. This normally occurs towards the end of the consultation period.

TUS engagement

Formal consultation with TUS representing scheme members is being progressed at the Collective Consultation Working Group (CCWG), which is the established forum for consultation on public service pension policy and where employer and member interests of each scheme in scope are represented. The group last met on 30 October 2020. Further meetings are scheduled in November before the consultation ends. Management side and TUS have committed to a constructive engagement on an outcome on transitional arrangements which will adequately meet the requirements of the legal ruling for members across the devolved schemes affected. Some associated issues on how costs attributable to the remedy solution are handled in scheme valuation processes remain contentious for TUS.

Financial implications

Removing unlawful discrimination back to 2015 in the devolved public service schemes is currently estimated to cost on average around £100 million in each year of the remedy period for additional future pension payments to members of those schemes in scope of this consultation. This equates to approximately £700m. This estimate 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. By way of context the total annual cost of paying out unfunded public service pension scheme benefits in the devolved schemes in 2018-19 was £1.3 billion.

Future cost management

The cost of the remedy in each scheme will be addressed as part of its scheme valuation and cost control process. Within this process costs are shared between scheme members and employers. The Department of Finance has responsibility under sections 11 and 12 of the Public Service Pensions Act (Northern Ireland) 2014 to issue Directions to the devolved public service schemes on scheme valuations and cost control. The cost control process has been paused since March 2019 due to 'McCloud' related uncertainty about the design and cost of public service pensions from 2015 onwards, and which has meant it has not been possible to make accurate actuarial calculations about the cost cap mechanism. When a policy decision is taken following the consultation outcome the Department will set out in directions detail of how remedy costs should be taken into account in scheme valuations. These directions will be subject to statutory consultation with member representatives before they are made. How the cost control outcomes for each scheme are taken forward will be considered once the details of the scheme cost cap valuations are known.

Next steps

Following the close of consultation the Department will publish a formal response, including more detail on options for legislative changes required to progress the policy outcome.