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Your reference:  
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Dear Peter,

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

The Department wrote to the Committee on 19 August 2020 and again on 19 October 2020 on the consultation on changes to the transitional arrangements to the 2015 public service pension schemes. Officials also attended to provide evidence on the consultation on 4 November 2020. Officials will also attend the Committee on 10 March 2021 to provide further evidence on this matter.

The officials attending the evidence session on 10 March 2021 will be Grace Nesbitt, Director of Pensions Division; Blathnaid Smyth, Assistant Director of Public Service Pensions, and Stephen Ball, Public Service Pensions Policy and Legislation Branch. Officials will give evidence remotely via Starleaf video conferencing.

In advance of the meeting a further briefing paper on the consultation outcome 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**

## **BRIEFING PAPER: PUBLIC SERVICE PENSION SCHEMES: CHANGES TO THE TRANSITIONAL ARRANGEMENTS TO THE 2015 SCHEMES**

### **Overview**

The Department consulted on proposed changes to the transitional arrangements to the 2015 reformed public service pension schemes from 19 August 2020 to 18 November 2020. These changes are required to remove unlawful age discrimination identified by the courts in transitional arrangements which allowed members closest to retirement, and therefore older, to remain in the pre-reformed schemes from 1 April 2015 while younger members were moved into the reformed schemes. The courts found these protections unlawfully discriminated against younger members of schemes who did not qualify for the protections. Any delay in developing and implementing arrangements to address this discrimination carries significant risk of further legal challenge.

The consultation proposed to remedy the discrimination that has occurred by providing affected scheme members with a choice on how to have pension benefits accrued in the period discrimination has occurred (either in the legacy scheme or reformed scheme arrangements). To remove discrimination for the future it was proposed that all active members will accrue service from 1 April 2022 only in the reformed schemes. Views were requested on whether this choice should be made immediately or deferred until the point of retirement. Views were also requested on whether the proposal to remove discrimination for the future achieved equality of treatment.

The Department wrote to the Committee on 25 February 2021 on the consultation outcome. The Department's response to the consultation has been published at <https://www.finance-ni.gov.uk/publications/response-consultation-proposed-changes-transitional-arrangements-2015-schemes>. The response sets out the Department's proposal to proceed with the deferred choice option for scheme members affected by the discrimination which has occurred from April 2015, and to reaffirm the 2015 reformed schemes for all future service from 1 April 2022.

More detail on the background, consultation outcome and proposed next steps are contained below. Additional summary analysis of consultation responses and a full list of organisational respondents are also contained at the Appendices to this paper.

### **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 ruled that 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 contained 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. 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 proposed two options for when the member's choice on how to have their pension entitlements in the remedy period calculated is made. The two approaches proposed were:

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

The consultation also sought views on how the approach to remove discrimination for the future through accrual of all service in reformed pension schemes from 1 April 2022, ensured equality of treatment

These proposals were identical to those in the equivalent Treasury consultation for schemes in Britain established under comparable Westminster legislation. The Department's consultation proposals were developed in conjunction with the Treasury and with policy representatives from public schemes across the UK, including those here in NI. Given the analogous nature of pension provision between public service pension schemes here and in the similarly constituted comparable schemes in Britain a conjoined approach to core policy development in response to shared legal challenge across the schemes has been taken to address the effects of the discrimination in a way which meets the requirements of the courts ruling with consistency, and also mitigates the risk of future legal challenge across those schemes.

## **Scope of consultation**

Schemes in scope of the consultation were 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.

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.

## **Consultation outcome**

The Department of Finance received 443 responses to the consultation. This included views across a variety of sources, including private individuals, trade union groupings, employers, administrators and other representative organisations. Not all consultation responses necessarily addressed the specific questions posed in the consultation document. However all responses were considered appropriately in the formulation of the response.

The breakdown of responses was as follows:

- 419 responses from individuals;
- 14 responses from trade union groups;
- 3 responses from Scheme Advisory Boards (SABs);
- 3 responses from organisations unaffiliated to Public Service Pensions;
- 2 responses from other employee representative organisations;
- 1 response from scheme administrator, and
- 1 response from an employer.

Employee representatives groups for each of the public service employments represented at the Collective Consultation Working Group (CCWG) submitted responses, including a collective response from NIC-ICTU, which is the composite trade union organisation, which provides collective representation for scheme members in scope of the consultation at the CCWG.

There were 121 responses relating to workforce member campaigns. Of these, 44 members of the NI Teachers' Pension Scheme submitted campaign responses. 77 campaign responses were received from HSC employees.

A full list of the organisations that responded is provided at appendix 2.

### **Immediate choice (IC) & deferred choice underpin (DCU)**

The majority of respondents to the consultation who expressed an explicit preference supported the DCU option over the IC. Many concerns were raised in the consultation that the IC option required members to take key decisions about their future benefit entitlements based on multiple assumptions about their future circumstances. Conversely most respondents felt DCU provided eligible members with more certainty about their actual benefit entitlements based on factual information about earnings, personal circumstances and future plans, at their chosen point of retirement.

In general respondents were concerned that the higher level of uncertainty and unavoidable assumption-making about these same circumstances which the IC option inevitably involves, would effect an unacceptable high level of risk of members' making ill-informed or wrong decisions based on incomplete available information.

From the 443 responses to the consultation, of those who gave an explicit preference between the two options proposed 61.4% preferred the DCU option and only 2.93% preferred the IC. Whilst 35.67% of respondents did not express an explicit preference they nevertheless raised the same concerns as in the paragraph above concerning IC. More analysis of responses on this issue is contained at appendix 1.

### **Departmental response**

Having considered all the responses to the consultation the Department of Finance proposes to proceed with the DCU. This means that eligible members would make their decision on whether remedy period benefits are calculated under reformed or legacy scheme rules at the point immediately before their chosen retirement or when benefits are due to be paid from the scheme. Until that choice is made, members would be deemed technically to have accrued remedy period benefits in their legacy schemes, rather than reformed schemes, for the remedy period.

The Department believes that an individual choice on how remedy benefits are calculated is important. Whilst a simpler alternative approach of providing all members with legacy benefits for the remedy period would also resolve the discrimination, it would not take account of the fact that not all members are better off in the pre-reformed schemes. The DCU option protects the benefits that have already been accrued by those members who are better off in reformed schemes.

This choice will be available to all active, deferred or pensioner 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, in a public service scheme in scope of the consultation. This will also be irrespective of whether they have submitted a legal claim or not. Members who have already retired and/or received a pension award will be asked to make their choice as soon as practicable once the legislative and administrative arrangements are in place and their choice will be applied retrospectively back to the date their original award was made.

The DCU represents the fairest option to ensure members have appropriate choice, clarity and control concerning their remedy period entitlements, whilst also

comprehensively removing the age-discrimination identified by the courts. 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.

### **Pension provision for future service**

On the question of ensuring equality of treatment after 31 March 2022 some respondents agreed the proposal that all members only accrue service in the reformed schemes from the end of the remedy period was the fairest way to ensure the unlawful difference of treatment on grounds of age was removed. Other respondents considered that this approach would not completely remove discrimination and members who were previously transitionally protected should instead be allowed to remain in their legacy schemes indefinitely.

There were 130 responses to the question of pension provision for future service; 110 from individuals and 20 from organisations. Of those respondents who expressed a distinct opinion 11 felt the proposal would technically ensure equal treatment from 1 April 2022 onwards. In most cases where respondents argued that previously protected members should retain their legacy scheme membership indefinitely, the reasoning provided did not demonstrate how this would better resolve the unlawful discrimination, rather than perpetuate it through the continued use of an unlawful age based difference in treatment. It was also evident that many respondents considered the legacy schemes as being intrinsically more advantageous to scheme members. However in many cases the reformed schemes are more generous for members, especially for those with less dynamic salary increases throughout their career. The Hutton Commission identified the CARE scheme design as inherently fairer for many lower paid workers.

Some respondents to the consultation sought to readdress the 2015 reforms generally. They believed it was unfair for pension arrangements to be changed at all, and that all members should be able to retire in line with the arrangements as they were when they entered service. More analysis of responses is contained at appendix 1.

### **Departmental response**

Having considered all the responses received on this issue the Department of Finance proposes to proceed with the approach that at the end of the remedy period, 31 March 2022, all active scheme members should accrue future service only in the reformed schemes. This approach ensures that all members are treated equally in respect of the scheme design available to them after the foregoing discrimination has been addressed. It would be unfair and would perpetuate the unlawful discrimination if some members, of the public sector schemes and not others, continue to be in the legacy schemes after April 2022 as this difference in treatment would still be attributable to unjustified age-based criteria. The majority of public service employees are already members of the reformed schemes, and the intention is to treat all members equally after the remedy period ends on 31 March 2022, in line with the findings of the courts.

It is obvious that some scheme members feel they have a legitimate expectation to remain in the same scheme arrangement they began service in. However, in introducing reformed schemes in 2015 it was never the intention that those legacy schemes would continue indefinitely. The transitional protections represented a

targeted exception to the core policy rationale on the basis of the intended aim of protecting those within 10 years of retirement from the reforms. As a consequence of the courts ruling that exception can now no longer be justified as legitimate for future service from April 2022. The Department does not believe it would be fair to allow some members, and not others, to continue under different arrangements and as members of different schemes, after the discrimination has been addressed and the remedy period ends.

The case for reformed schemes remains valid. As responsible authority for public service pension policy the Department of Finance has an associated duty to keep arrangements under review and to take forward changes when it judges it necessary to do so for reasons of equality, to comply with legal challenge, or for effective cost management. The original 2015 reforms as approved by the Assembly in 2014 represent the outcome of such a review. As well as promoting fairness across scheme members the changes agreed by the Assembly were necessary to ensure that schemes remain sustainable and fit for purpose for the future. The reformed public service schemes are designed on the basis of a longer working life to cover the cost of a longer retirement across the wider public service workforce.

When pensions arrangements change for the reasons given above some individuals who begin service at the same point in time, but who are of different ages will retire at different points in time under different arrangements. By 2022 the 10 year prescribed period for transitional protection will have expired and the majority of previously protected scheme members are expected to have retired or to do so in the coming years. Those who have chosen not to retire will have the same opportunities as other members of the reformed schemes to remain in service until at least or beyond their new scheme NPA, and have options to accrue more benefits in total over a longer period of service. They will continue to have access to a generous defined benefit, index linked, government backed pension arrangement with a significant employer contribution under the now more equitable and sustainable reformed CARE scheme model approved by the Assembly in 2014.

It is important to note also that in practicality, the funding model for devolved public service pension schemes is relative to the design and cost envelope of equivalent schemes in Britain, also funded by the taxpayer under central Treasury policies. To reverse the reforms for any sector within the devolved schemes or deviate in any significant way from equivalent scheme design in the comparable schemes in Britain would require reassessment of the funding envelope for the devolved schemes. Any change which would have the effect of providing a more generous level of benefits to public service workers members here in comparison to their counterparts in Britain would require bespoke funding provision from the block grant, and detract from existing budgets available for other important public services.

## **Position in Britain**

A Treasury consultation for the comparable schemes established under Westminster legislation was undertaken in 2020. This consultation was based on identical proposals to resolve the discrimination as those in the Department of Finance consultation. The Treasury response to its consultation was published on 4 February 2021. The Treasury response announced the intention to proceed with a comparable remedy solution for DCU and reaffirmed the applicability of the reformed schemes for

all service from 1 April 2021.

Department of Finance officials have worked closely with the Treasury in the development of this core policy proposal which can address the issue of discrimination as it applies across all affected schemes. This approach will ensure appropriate consistency of treatment across sectors where devolved scheme provisions are practically identical to those for the comparable schemes established under the equivalent Westminster primary legislation. This conjoined policy approach across similarly constituted schemes guards against the risk of future legal challenge, to which an individual scheme, which might otherwise deviate from the core policy proposals underpinning the remedy, would be vulnerable.

### **Equality screening**

The Department set out its initial analysis of equality impacts of the remedy proposals in the screening document published alongside the consultation. This has now been updated to take account of any additional issues raised in responses received to the consultation, and with focus on the proposal for DCU. The screening exercise concludes no unjustified adverse differential effects for s75 categories and that full EQIA is not required. The screening exercise is published at: <https://www.finance-ni.gov.uk/publications/response-consultation-proposed-changes-transitional-arrangements-2015-schemes>

It was noted in consultation that a number of organisational respondents proposed that attention should be given to further scheme level equality analyses of how the remedy proposals would affect the individual scheme workforces.

Individual pension schemes will undertake further equality screening as part of their consultation processes on their scheme level implementation plans, including consultations on draft regulations. The Department of Finance will consider any specific impacts of the detailed working-out of the policy for each scheme at that stage.

### **TUS engagement**

Formal consultation with TUS representing scheme members on this matter has been progressed at the Collective Consultation Working Group (CCWG), which is the established forum for consultation on public service pension policy. Employer and member interests of each scheme in scope of the proposed changes are represented at this forum. The group last met on 10 February 2021 and a next meeting is scheduled for 30 March 2021.

Employee representatives groups for each of the public service employments represented at the CCWG submitted responses to the consultation. This included a collective response from NIC-ICTU (which was forwarded to the Assembly Finance Committee on 18 November 2020). In its response NIC-ICTU considered DCU as its preferable option for the remedy period.

### **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.

### **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 had been paused since March 2019 due to 'McCloud' related uncertainty about the design and cost of public service pensions from 2015 onwards, and which meant it was not possible to make accurate actuarial calculations about the cost cap mechanism.

The Department will shortly commence consultation with TUS on directions to devolved schemes which would re-establish the cost cap mechanism and will set out in detail how remedy costs should be taken into account in scheme valuations.

2016 cost cap valuations are still to be finalised but it is not proposed to implement any negative breach of the cost cap mechanism which would occur due to the effects of the remedy, and where this would have a negative effect for scheme members. However any benefit improvements that may be due to members under the 2016 cost cap process will be delivered.

### **Proposed next steps**

Changes to the primary legislation governing devolved schemes will now be required to implement the proposed remedy. The legislative options to address this issue for devolved schemes include:

- I. An Assembly bill introduced by Department of Finance, or
- II. A Legislative Consent Motion (LCM) in the Assembly for the necessary changes to be carried in the Treasury bill which will implement the necessary changes for schemes in Britain.

A Treasury Bill to deliver the necessary changes for comparable schemes in Britain is now being drafted. The Bill is provisionally scheduled for introduction in May 2021, and is expected to complete its passage by end of 2021. In light of the conjoined policy approach adopted to date and the shared policy objectives emerging from both the Department of Finance and Treasury consultations, it is the Department's view that there is merit in an LCM for the changes now required to the Public Service Pensions Act (Northern Ireland) 2014 to remove the unlawful discrimination, to be carried in the Westminster Bill. This would address the close timescales now faced to implement the remedy solution by April 2022, as well as ensuring the changes for schemes here are implemented to the same timescales as the comparable schemes in Britain, and mitigate the risks of future litigation should the NI changes be delayed. The

Department already has 3 other bills targeted for completion before dissolution in April 2022 - (Review of Financial Process; Public Bodies Reform, and Social Value) and a standalone Bill would exert an additional strain on existing Departmental and Assembly legislative workloads for the remainder of the mandate. The LCM would be subject to the agreement in principle of the Executive. The Minister proposes to circulate a paper to Executive Colleagues for this purpose.

### **Secondary legislation**

Secondary regulations will also be required by the individual Departments with responsibility for the individual devolved schemes to implement the remedy at scheme level. To assist schemes in responding to the administrative challenges of installing new or revised processes and systems, and to complete consultations and communications to members, it is proposed to provide scope for some scheme changes to administer the retrospective element of the remedy to be introduced between 1 April 2022 and 1 October 2023. Should they require this flexibility schemes will specify the relevant date within this period in their scheme regulations. This will not change the dates of the remedy period. The remedy period will still end on 31 March 2022 in order to bring the existing discrimination to an end at that point, and all members will be treated equally in reformed schemes from 1 April 2022.

**FURTHER ANALYSIS OF CONSULTATION RESPONSES ON:**

- I) **PROPOSALS TO REMOVE DISCRIMINATION IN THE REMEDY PERIOD - IC & DCU;**
- II) **REMOVING DISCRIMINATION FOR FUTURE PENSION PROVISION**

**I) PROPOSALS TO REMOVE DISCRIMINATION IN THE REMEDY PERIOD - IC & DCU**

The consultation document invited views on the detail set out on the options for IC or DCU for the handling of remedy period benefits. Respondents were asked which option was preferable to address the discrimination identified by the courts. Opinions were also requested on the administrative impacts of the proposals.

A variety of concerns were raised about the IC proposal. There was some acknowledgement of its potential benefits to members where IC could provide clarity or 'closure' by means of representing the quicker resolution to the McCloud issue in general. This could suit some members already close to retirement.

However, more respondents felt the IC option would preclude proper consideration of all the possible future career and life events that would ultimately determine the most advantageous and appropriate outcomes for most members:

*"an Immediate Choice decision would be almost impossible for any staff with more than a few years left to retirement. There are too many unknown factors for an accurate decision to be made". - Individual response*

*"Members will want clarity regarding their actual rather than hypothetical pension benefits and these can only be known for certain at the point of retirement". – BMA*

Some respondents considered the risk to members of being compelled to take important decisions about future benefits based on assumptions and projections many years in advance of actual retirement, and which could lead them to choose a scheme that is less beneficial for them, in itself posed a significant future legal risk for responsible departments.

*"because it risks members making a decision that is not the best one, in a situation that they could argue they had not caused, and because they might then seek to argue that they were induced to make the wrong decision". - NIW*

The timescales proposed to progress an IC remedy solution were also considered by some respondents to be too restrictive to ensure all eligible members could be provided with the adequate time, tools and information to inform knowledgeable decision making. Many individual responses, and also some administrators

highlighted the crucial importance of accurate information from schemes, including the availability of online modellers and calculators, (as the consultation document had proposed). However, they also raised significant doubts on the feasibility that adequately robust systems and processes could be in place in line with the constricted timescales associated with the IC option.

*“The proposal states that online calculations will be made available to assist members in making their choice. It has not been suggested who will provide these tools. If it is to be software providers, there are concerns that 2022 is too tight a timeline for these to be implemented.”* - Aquila Heywood.

Anticipated pressures for other resources such as ready access to independent financial services, was also a feature of concerns about the timeframes associated with the IC option. With so many individuals seeking services from registered independent financial advisors within the same relatively contracted period there is a real risk not all may be able to source a reliable authorised service. This issue was a prominent one raised in campaign responses received from the teachers’ sector.

Other respondents commented on logistical risks that scheme members with deferred entitlements could prove difficult to trace and might also be disadvantaged if unable to record a valid choice in the timeframes available under IC.

The effect of unknown future career events and decisions was also highlighted as a factor which exposed potentially serious flaws in the IC proposal, especially where those events and decisions could have a significant effect on whether Final Salary or CARE benefits would be more advantageous for any scheme member at the eventual point of retirement.

*“if career plans change, there is a significant risk that a member may have chosen an option under immediate choice that results in them receiving a lower benefit than if they were able to make the choice at the point of retirement.”* - BMA

From the 443 responses to the consultation, of those who gave an explicit preference between the two options proposed. 61.4% preferred the DCU option and only 2.93 % preferred the IC. Whilst 35.67% of respondents did not express an explicit preference many of these nevertheless raised the same concerns about IC which have been set out above.

Those who expressed a preference for DCU over IC reasoned that it better enables members to make more informed decisions at retirement based on factual information rather than be resigned to irrevocable and possibly inaccurate projections about their future circumstances.

*“This was considered to be the most sensible safe option as members will be able to select remedy period benefits with the benefit of hindsight, rather than having to make significant assumptions about their future career and retirement plans which may not be borne out in reality”.* - RCN

This rationale was also reflected in the very real world concerns expressed by some individual scheme members:

*“the only option is the deferred choice underpin as I don’t know for certain what my future salary will be or when I will retire. Consequently, I am concerned that I will make the wrong choice and potentially end up with a lower pension under the immediate choice proposal”*. - Individual (Campaign response from individual)

As well as reducing the potential for members making ill-informed or wrong decisions under IC, which would disadvantage them in retirement, respondents also felt DCU would best mitigate against future legal risk for schemes and employers should this result in claims for liability.

*“The limitation of risk of further legal challenge from scheme members remains a deciding factor. The associated risk identified with ‘immediate choice’ is significant enough to outweigh any administrative advantage that this may present”*. - FF (NI) SAB

The consultation had set out the additional long-term administrative burdens which could be expected with DCU however some commentators felt these additional pressures would ultimately be justified if delivering improved member outcomes at the point of retirement and where the most crucial information members require for effective decision making is available and updated. It was also felt that DCU mitigated against the urgent timescales for administering IC and the risks for those members, mainly deferred, who either could not be reached or did not respond within the necessarily close prescribed timescales.

This progressive approach to administrative workloads was a theme across some submissions from workforce representatives. Whilst recognising the additional long term administrative burdens associated with DCU other stakeholders, including those for the police scheme, also acknowledged related opportunities to improve services to members.

*“The communications challenges with DCU remain as for IC, but are spread over a greater number of years, which will allow provision of better information to members over time through repetition and engagement”*. - PSNI

In its response NIC-ICTU, which provides composite employee representation for each of the unionised workforces in scope of the consultation considered DCU as preferable as it would be:

*“..easier for scheme members to deal with and provides scheme administrators with time to deal with priority issues such as ill-health and death in service cases”*. - NIC-ICTU

This was echoed in some of the individual trade union responses, including NIPSA, the main union representing civil servants.

The Alliance party, which was the only political party that submitted a response to the consultation, noted that DCU would be more administratively challenging in the long term but would nevertheless be justified by providing more certainty for individuals at the right point in time.

In its response to this segment of the consultation the NASUWT advocated the DCU over IC but also articulated a preference towards a third approach wherein the scheme

would determine the arrangement the member should be a member of during the remedy period, subject to a guarantee that the higher amount of benefits from either option would be made available and the member would also retain the right to reject the scheme's determination.

*"The NASUWT believes that this is preferable to placing all scheme members who fall within the scope of the remedy in the legacy scheme as a default. Nevertheless, if the 'Government choice' option is not made available, the NASUWT is very clear that the DCU option is vastly preferable to the immediate choice option."* - NASUWT

This concept of an anytime or 'hybrid' third choice option is one which was raised in initial discussions with TUS representatives leading up to the consultation but was not substantially or effectively further elaborated upon in the consultation responses.

While recommending the DCU as the most appropriate option both to mitigate against future legal risk against the scheme and also the possibility of ill-informed decision making, the FBU also raised scheme specific concerns particular to the scheme for Firefighters. The PSPA(NI) 2014 provides that the NPA for the reformed Firefighters scheme is specified in its scheme regulations at between 55 and 60 years. The regulations currently specify age 55, which is lower than both the legacy 2007 firefighters NI scheme and the comparable 2006 and 2015 schemes in Britain, which each have an NPA of 60.

The FBU submission highlighted that this scenario may be especially problematic for its 2015 members if defaulted to the legacy 2007 scheme for the remedy period, and also those who might choose the 2015 firefighters' pension scheme as their eventual DCU. Due to differences in the contribution levels between arrangements (2007 scheme members pay lower contributions rates) FBU argue contribution deficits may also result.

*"Simply defaulting 2007 scheme members into their legacy scheme instead of offering them an indicative choice will be problematic in terms of the NPA issue and could also cause unintended and avoidable consequences because of the different contribution rates between the legacy and 2015 scheme".* - FBU

The FBU advocated that an indicative choice should be provided to address this issue. Its latter point concerning treatment of differing contribution rates between some legacy and reformed arrangements was also raised as an issue by stakeholders for the Police scheme.

### **Department of Finance response**

From the responses received a clear view was expressed that the features of the IC the option present unacceptable risks for the majority of members in respect of their actual future outcomes. For the majority who expressed a view this ultimately outweighed any perceived IC benefit or real world certainty the immediate assurance about which set of rules would be used to calculate remedy period service might provide. Many respondents felt strongly that IC might not provide the pension outcomes individuals had previously expected, and these risks could be all the greater as in many cases this would not become apparent for many years until the very point of benefit crystallisation.

Having considered all responses received the view of the Department is that the DCU option represents the fairest option to ensure members have appropriate choice, clarity and control concerning their remedy period entitlements, whilst also comprehensively removing the age-discrimination identified by the courts. On this basis it now proposes to progress with the DCU option.

The points raised in the consultation in respect of the particular circumstances of the Firefighters scheme are noted and require further consideration. The Department of Finance does not consider a bespoke option for indicative retirement is justified as this would retain an age related difference in treatment for this sector. However further consideration will be required as to any scheme level initiatives which may be appropriate or available within the context of the overall DCU remedy solution.

Further scheme level policy decisions may also be required on additional issues including how variances in contribution between some scheme arrangements are handled both in the Firefighter Scheme and Police Schemes.

Given the decision to proceed with DCU the concerns raised which were specific to the IC option should not now arise.

The Department received useful contributions in individual and organisational responses on the challenge of administering the DCU option over a long term period in excess of 40 years into the future. It is anticipated that in comparison to IC the extended timescales involved for DCU will provide space necessary for development and implementation of enhanced or additional administrative, and technical systems necessary to underpin the required processes to ensure accuracy and efficiency is effectively sustained.

As part of the administrative challenge the immediate task to legislate to remove the discrimination from the end of the remedy period on 31 March 2022 remains imperative. In light of concerns on timescales for the most pressing legislative, technical, and administrative changes that are required consideration is now being given to what flexibilities may be available for schemes within the main timescales set out previously in the consultation document. This will not change the dates of the remedy period. The remedy period will still end on 31 March 2022 in order to bring the existing discrimination to an end at that point, and all members will be in reformed schemes from 1 April 2022. However to assist schemes in responding to the administrative challenges of installing new or revised processes and systems, and to complete communications to members, it is proposed to provide scope for the scheme changes to administer the remedy to be introduced retrospectively between 1 April 2022 and 1 October 2023. Should they require this flexibility schemes would need to specify the relevant date within this period in their scheme regulations.

## II) REMOVING DISCRIMINATION FOR FUTURE PENSION PROVISION

The consultation sought views on whether the proposed approach to removing discrimination for the future service ensured equality of treatment. To achieve equality of treatment the consultation document proposed scheme members would accrue future service in the reformed schemes only from the end of the remedy period. This would require changes to primary legislation to remove the discriminatory transitional protections and close the legacy schemes for future service after 31 March 2022. Changes will also be required to scheme regulations.

There were 130 responses to this question - 110 from individuals and 20 from organisations. Of those respondents who expressed a distinct opinion 11 felt the proposal would technically ensure equal treatment from 1 April 2022 onwards. However, in many cases these respondents also expressed a view that scheme members should also be allowed to remain in legacy arrangement indefinitely.

Member and organisational responses for the police scheme expressed concerns that younger members would be discriminated against, as NPAs in the new CARE schemes for some uniformed services are linked to age as well as length of service and as a consequence these younger members could not now accrue a full pension under legacy terms in the same way as their older colleagues or predecessors in the police scheme may have been able to:

*“The rationale for the treatment of those who were protected by reason of age (45 or over in 2012) needs to be set out clearly alongside the impact on these members since, as a result of the 2022 changes, they will not now be able to accrue a ‘full’ 1988 pension”. - PFNI*

The belief that moving legacy scheme members to the reformed schemes might discriminate on grounds of age in comparison to those who had already retired in the legacy scheme, or would do so before April 2022 was expressed in responses across various workforces.

Conversely, other respondents also felt that moving previously protected members to the reformed schemes would discriminate against those older members who had originally qualified for transitional protection.

Where responses claimed that previously protected members would suffer a disadvantage by being moved to the reformed schemes, this was often articulated in terms of a new or continued form of discrimination, however, a convincing rationale as to how the change would constitute a recognised form of unlawful treatment within the context of the courts’ targeted findings on transitional protections was not provided.

A number of respondents argued that equality could only be achieved by allowing all members to accrue benefits under the terms and conditions they originally signed up for and for this reason the legacy arrangements should continue to operate beyond 2022 for those members.



Arguments for retained membership of the legacy schemes was also expressed in terms of the expectation of members who joined under previous scheme terms that they would retain these terms indefinitely until retirement. This concern for 'legitimate expectation' was a common theme across many respondents who disagreed with the consultation proposal. Some respondents believed that it is unfair for pension arrangements to be changed at all, and that all members should be able to retire in line with the arrangements which were in place when they entered service:

*"I joined NICS in 1996. I had a reasonable expectation that my terms and conditions in terms of my pension (including most importantly for me, age of retirement) would not be fundamentally altered during my service".* - Individual response

Among those who raised these concerns many proposed it was justified that members joining after 1 April 2012 were placed in reformed schemes but felt that approach should be disappplied for those in service before 1 April 2012:

*"A better way to ensure fairness and equality for all ages is to allow members who were members of the scheme before 1st April 2012 to have the option of having legacy benefits for the rest of their service. The reformed scheme should only apply to new members who joined from 1st April 2012".* - Individual response

Whilst some responses appeared to concede that the proposal would achieve its intended purpose for equal treatment this question also provided an opportunity to reiterate opposition to the original 2015 reforms generally rather than the impact of the proposals on ensuring equal treatment:

*"Whilst application of reformed scheme from 1/4/2022 would appear to provide greater equal treatment TUS remains opposed to the Hutton changes especially with regard to NPA linkage to SPA."* - NIC-ICTU

Individual comments from members of the emergency response services expressed continued opposition to how the original 2015 reforms had restricted a concessionary approach on NPA to Police and Fire Service workforces, and advocated their own NPA should be similarly aligned:

*"As a paramedic my life expectancy is reduced. This is a fact. Night working shift workers research etc. clearly states this as well as the stress and other factors associated with psychological trauma. It's a disgrace we aren't treated similarly to other emergency services when we are called upon more than our counterparts".*  
- Individual response

As well as the effects of higher NPAs associated with the reforms introduced in 2015 some organisational responses also revisited concerns that the new schemes were by design less advantageous to their members both in terms of benefit structure and the interaction with the taxation regime:

*"The switch to a new career average revalued earnings (CARE) scheme for all HSC NI staff, with an accrual rate of 1/54th meant that some would see a reduction in value. This reduction is compounded by the interaction between the pension taxation system and the NHS pension schemes that result in members who were*

*forced to be on both the reformed and legacy scheme paying significantly more in terms of annual allowance taxation” - BMA*

Both medical and Firefighter unions voiced concerns at perceived effects of the 2015 reforms on retention and recruitment, where it was felt that if members leaving service early could effect a loss of valuable experience in those professions.

In addition to seeking to allow members to choose to stay in their legacy scheme beyond 2022 some responses from these sectors advocated the use of other scheme concessions to allow members to take benefits in legacy scheme and continue to work on or to take CARE accruals alongside legacy benefits at age 60 without reduction for early payment.

Some respondents raised points of accuracy with the consultation’s statement that: ‘By 1 April 2022, all members who were offered transitional protection from 2015 will in fact have reached their NPA in their legacy scheme’. (Para 3.12) This issue was picked up by stakeholders for the Police scheme who also expressed concern that by the end of transitional period not all members in legacy schemes will have accrued 30yrs of service and that NPA in legacy police schemes is also linked to length of service.

### **Department of Finance response**

Many responses focused opposition to the original reforms being applied to previously protected members following the removal of transitional protections at 1 April 2022. Also, whilst some responses did acknowledge the proposed approach would ensure equality of treatment within the context of the courts findings and the legal imperative to remove now discriminatory transitional provisions, this was in many cases caveated and superceded by their views concerning ‘legitimate expectation’.

It was also evident that many respondents considered the legacy schemes as being intrinsically more advantageous to scheme members. This is not fully accurate. In many cases the reformed schemes are more generous for members, especially for those with less dynamic salary increases throughout their career. The Hutton Commission identified the CARE scheme design as inherently fairer for many lower paid members. Any reversal of the reforms would make these members worse off.

As well as promoting fairness the changes made to schemes in 2015 were deemed necessary to ensure that schemes remain sustainable and fit for purpose for the future. The reformed schemes remain among the best available in the workplace: backed by the taxpayer; index-linked; and offering guaranteed defined benefits on retirement.

Some respondents to the consultation believed it unfair for pension arrangements to be changed at all, and that all members should be able to retire in line with the arrangements as they were when they entered service. As responsible authority for public service pension policy the Department of Finance has an associated duty to keep arrangements under review and to take forward changes when it judges it necessary to do so for reasons of equality, to comply with legal challenge, or for effective cost management. The original 2015 reforms as approved by the Assembly in 2014 represent the outcome of such a review. The objectives and rationale of the reforms remains valid. The reformed public service schemes are designed on the

basis of a longer working life to cover the cost of a longer retirement across the wider public service workforce.

As set out in the original consultation 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 were and remain important steps to protect against unsustainable increases in costs.

It is important to note also that in practicality, the funding model for devolved public service pension schemes is also relative to the design and cost envelope of equivalent schemes in Britain, also funded by the taxpayer under central Treasury policies. To reverse the reforms for devolved schemes or deviate in any significant way from equivalent scheme design in the comparable schemes in Britain would require reassessment of the funding envelope for the devolved schemes. Any change which would have the effect of providing a more generous level of benefits to public service workers members here in comparison to their counterparts in Britain would require bespoke funding provision from the block grant, which would likely detract from existing budgets available for other important public services.

In terms of the arguments provided that the removal of transitional protections would create a new discrimination for those now moved to the reformed schemes. The Department of Finance does not accept that the removal of a scheme provision categorised as unlawfully discriminatory by the courts now gives rise to a valid claim for new discrimination against those who were previously protected by or benefitted from that unlawfully discriminatory scheme feature. Under the remedy proposal these previously protected members will be treated equally in the same way as those previously denied the transitional protection. If some members were allowed to remain in different schemes, that objective would not be achieved.

It is acknowledged that many respondents have a desire to maintain their current arrangements until the point at which they retire, even if this is after 1 April 2022. However, in introducing reformed schemes it was never the intention that legacy schemes would continue indefinitely. The transitional protections represented a targeted exception to the core policy rationale on the basis of the intended aim of protecting those within 10 years of retirement from the reforms. However as a consequence of the courts ruling that exception can no longer be justified as legitimate for future service from April 2022 and the Department of Finance does not believe it would be fair to allow some members, and not others, to continue under different arrangements and as members of different schemes, after the discrimination has been addressed and the remedy period ends.

Some individuals who begin service at the same point in time, but who are of different ages will retire at different points in time under different arrangements. This can occur when pensions arrangements change for the reasons given above. By 2022 the 10 year prescribed period for transitional protection will have expired and the majority of previously protected members are expected to have retired or to do so in the coming years. By 2022 all members will also have had at least 19 months notice about the remedy proposals and those who have chosen not to retire will have the same opportunities as other members of the reformed schemes to remain in service until at least or beyond their new scheme NPA, and have options to accrue more benefits in

total over a longer period of service. They will continue to have access to a defined benefit, index linked, government backed pension arrangement with a significant employer contribution under the now more equitable and sustainable reformed CARE scheme model approved by the Assembly in 2014.

Having considered the responses to the consultation and the issues raised on the proposals for future arrangements after the discrimination identified by the courts has been addressed, the Department of Finance remains of the view that that the proposal that anyone who remains in service from 1 April 2022 will do so as a member of their respective reformed scheme is appropriate and ensures equal treatment in terms of scheme membership.

**Organisations who responded to consultation**

Association of School and College Leaders  
NASUWT - National Association of Schoolmasters Union of Women Teachers  
BMA - British Medical Association  
HSC SAB  
NIWS - Northern Ireland Water  
PSA & SANI - Police Superintendents' Association and Superintendents' Association of Northern Ireland  
Aquila Heywood  
Firefighters (Northern Ireland) Scheme Advisory Board (SAB)  
INTO - Irish National Teachers' Organisation  
NEU (NI) - National Education Union NI  
Fire Brigades Union  
Police Federation for Northern Ireland (PFNI)  
NIC-ICTU - Northern Ireland Committee - Irish Congress of Trade Unions  
FDA - The Association of First Division Civil Servants  
Community Trade Union - Northern Ireland Justice & Custodial Branch  
Pension Challenge Administration Team  
University College Union  
Chartered Society of Physiotherapy  
Alliance Party  
NIPSA - Northern Ireland Public Service Alliance  
RCN - Royal College of Nursing  
NIPB - Northern Ireland Policing Board  
PSNI - Police Service of Northern Ireland  
UTU - Ulster Teachers' Union  
Police SAB NI