



A Consultation on the Draft Police Pensions (Remediable Service) Regulations (Northern Ireland) 2023

This consultation explains the policies that are required to implement the remedy and seek comment on specific aspects of those policies. The legislation required to amend the rules of the police pension schemes will be made in September 2023 and come into operation on 1 October 2023.

This consultation begins on 16 March 2023.

This consultation ends on 7 June 2023 at 11pm.

Department of Justice
Safer Communities Directorate
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1. Introduction

1.1 The Public Service Pensions and Judicial Offices Act 2022¹ provides an overarching framework to allow public service pension schemes, including devolved pension schemes in Northern Ireland, to remedy the impact of unlawful age discrimination identified in litigation cases ('McCloud judgement'). That discrimination arose due to certain transitional arrangements put in place when public service pension schemes (including the police schemes) were reformed between 2014 and 2016².

1.2 Secondary legislation is also required to amend the rules of each affected public service pension scheme to implement the remedy for their members. The remedy was designed to be delivered in two stages, the first, to bring the discrimination to an end (the prospective remedy) from 1 April 2022, and the second, to be implemented on 1 October 2023, to remedy the discrimination that had taken place between 1 April 2015 and 31 March 2022 (the retrospective remedy).

1.3 The Department of Justice ('the Department') introduced the prospective remedy through the Police Pensions (Amendment) Regulations (Northern Ireland) 2022, which came into effect on 1 April 2022. Since that date, all police officers have been members of the 2015 reformed pension scheme.

1.4 The second stage is to deliver the retrospective remedy. This consultation document and accompanied draft regulations (**Annex A**) sets out the background to the second, retrospective, part of the remedy and an explanation of legislative and policy changes required to implement it. The retrospective remedy is complex and affects people in different ways. The Department would, therefore, welcome input from policing stakeholders and interested parties to ensure that the final regulations and policies are based on the broadest possible understanding of how this remedy will affect members of our pension scheme.

¹ [Public Service Pensions and Judicial Offices Act 2022 \(legislation.gov.uk\)](https://legislation.gov.uk)

² For Background reading refer to [Police pension reform - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

2. Executive summary

2.1 This consultation addresses the changes being made to implement the 'retrospective remedy'. This involves amending scheme rules to remove the effect of the transitional protections seen between 1 April 2015 and 31 March 2022 ('the remedy period') and implement provisions for immediate choice (IC) and a deferred choice underpin (DCU).

2.2 IC members include both pensioner and deceased members with service during the remedy period, which is the period during which discrimination took place. Eligible members, or a member representative of a deceased member, will be able to choose to receive legacy pension scheme benefits or benefits equivalent to those available under the 2015 reformed scheme for service during the period 1 April 2015 to 31 March 2022.

2.3 The DCU will give members a deferred choice between legacy pension scheme benefits or benefits equivalent to those under the 2015 reformed scheme for the remedy period at their point of retirement.

2.4 Retrospective changes to regulations will also be made to correct any overpayment or underpayment of pension benefits or member contributions. This includes benefits or contributions paid to or by a member because of their choice. The regulations will facilitate the payment of appropriate compensation to address financial loss arising from the discrimination or operation of the remedy.

2.5 There are other policy areas where we are considering whether further amendments to the regulations may be needed, beyond those in the published draft Statutory Rule being consulted on (**Annex B**). When responding to this consultation, we ask you to presume that the draft regulations will reflect the policy intent as described.

2.6 Department officials engaged in discussions with the Northern Ireland Policing Board ('NIPB') as the scheme manager, the Police Service of Northern Ireland ('PSNI') as the scheme administrator, the Department of Finance ('DoF'), Police Scheme Advisory Board (NI) and attended collaborative sessions with Home Office, Scottish and Welsh Government counterparts.

2.7 The aim of the sessions were to ensure interoperability between schemes and that stakeholders were given the opportunity to directly engage with the Department on understanding and implementing the provisions in the Public Service Pensions and Judicial Offices Act (PSPJOA) 2022, The Public Service Pensions (Exercise of Powers, Compensation and Information) Directions (Northern Ireland) 2023 ('PSP Directions (NI) 2023') development of HMRC remedy tax rules (**Annex B**) and the scheme specific policy for the police pension schemes.

2.8 The Department also provided stakeholders with an opportunity to seek clarification on any aspects of the policy and feedback on identifying gaps when developing scheme specific policy and processes.

2.9 The regulations to bring the retrospective remedy in to operation will come into effect from 1 October 2023. NIPB/PSNI as scheme manager/administrator will make contact (potentially before and after 1 October 2023, and continuing in the future) with those affected by the remedy to notify them of the changes and what action will be required of them.

3. Who do we want to hear from?

3.1 This consultation welcomes views from interested parties on the draft regulations and policy intent to implement the retrospective phase of the remedy. We are specifically interested in the views of groups that represent police officers, police employers, and others responsible for implementing the remedy changes.

3.2 A link to this consultation has been sent to the following groups:

- i. Police Federation for Northern Ireland
- ii. Superintendents' Association of Northern Ireland
- iii. Chief Police Officers' Staff Association
- iv. Northern Ireland Retired Police Officers Association
- v. Northern Ireland Policing Board
- vi. Police Service of Northern Ireland
- vii. Northern Ireland Police Pensions Scheme Advisory Board

3.3 This list is not exhaustive or exclusive, and responses are welcomed from those with an interest in, or views, on the subject covered by this consultation.

3.4 Under section 25(9) of the Police (Northern Ireland) Act 1998³ the Department must consult with the Police Advisory Board for England and Wales.

³ [Police \(Northern Ireland\) Act 1998 \(legislation.gov.uk\)](https://legislation.gov.uk)

4. Retrospective changes to remove discrimination

Public service reforms and the Court of Appeal judgment

4.1 In April 2015, the government introduced reformed public service pension schemes. The changes followed a fundamental structural review by the Independent Public Service Pensions Commission, chaired by Lord Hutton of Furness. As part of these changes, protection was provided to those members who were close to retirement, meaning that they would be allowed to remain in their legacy scheme or gradually transition to the relevant reformed public service pension scheme. For the police pension scheme, this applied to those within fourteen years of their normal pension age⁴ (NPA). This policy was referred to as ‘transitional protection’ arrangements.

4.2 The Equality Commission advised that it was broadly content that the Department of Finance (DoF) screening exercise on the Public Sector Pensions Bill (Northern Ireland) 2014 had followed its guidance. It noted the work undertaken in advance of the introduction of the Bill and welcomed the transitional protection measures to mitigate the impact of the reforms.

4.3 In December 2018, the Court of Appeal found that transitional protections unlawfully discriminated against younger members of the judicial and firefighters’ pension schemes. Transitional protection was available to those nearest retirement, who were, by definition, older scheme members. It is important to note that the transitional protection element of the 2015 reforms was found to be discriminatory, not the reformed scheme itself.

4.4 In July 2019, the UK government confirmed that it accepted the Court’s judgment had implications for the other public service schemes that had similar transitional arrangements, including the police pension schemes.

4.5 Legal advice sought by DoF confirmed that age discrimination also extended to the similarly constituted devolved schemes established under the Public Service Pensions Act (Northern Ireland) 2014 and these schemes would need to be similarly remedied.

4.6 In January 2020 the DoF issued a joint statement⁵ agreed by management side and trade union side acknowledging that the reformed public service schemes in

⁴ The 1988 Royal Ulster Constabulary Pension Scheme has no Normal Pension Age as such. Individual members can have a pension age based on their length of service and linked to, but not necessarily dependent on, age, or they can have a pension age that depends on their rank. This term NPA is used here as shorthand, and for this police scheme means the different ages as used in the design of the original transitional protection.

⁵ [Statement on the McCloud judgement | Department of Finance \(finance-ni.gov.uk\)](#)

Northern Ireland incorporate similar age-based transitional protections, therefore it was appropriate that this discrimination be removed from these pension schemes.

The remedy

4.7 On 16 July 2020, the government published a consultation entitled “Public service pension schemes: changes to transitional arrangements to the 2015 schemes”. The consultation set out two proposed options for retrospectively removing the discrimination suffered by members who were not eligible for transitional protection due to their age and proposed that the legacy schemes would be closed to all members on 31 March 2022.

4.8 In February 2021, the government published its response, confirming that the legacy schemes would close on 31 March 2022 and that affected members would be given a choice of which pension benefits they wish to receive for the remedy period (1 April 2015 to 31 March 2022) when those benefits are paid.

4.9 The PSPJOA was introduced to the House of Lords on 19 July 2021. It received Royal Assent on 10 March 2022. The PSPJOA sets the framework for the retrospective remedy, including the deadline for all eligible members to be treated as having accrued service in the relevant legacy schemes for the remedy period by 1 October 2023. On 1st November 2021 the Northern Ireland Assembly passed a Legislative Consent Motion to support this Act.

4.10 The Department is required by the PSPJOA to introduce legislation and policies to implement the retrospective pension remedy in the police pension schemes by the 1 October 2023 deadline.

4.11 The remedy is being delivered in two phases:

- i. The prospective remedy, which has already been delivered and has been in operation from 1 April 2022. The legacy schemes closed to future accrual on 31 March 2022 and all members who continued in pensionable service from 1 April were transitioned to the 2015 reformed scheme from that date
- ii. The retrospective remedy, which is to be in operation by 1 October 2023. From 1 October 2023, eligible members will be able to choose to receive a legacy scheme benefit or benefits equivalent to those available under the 2015 reformed pension scheme for remediable service

4.12 The prospective remedy was achieved through the Police Pension (Amendment) Regulations (Northern Ireland) 2022 and the PSPJOA. The Department (as the Responsible Authority for the police pension schemes in Northern Ireland)

consulted on proposed amendments to the Police Pension (Northern Ireland) Regulations 2015 between 30 November 2021 and 24 January 2022 as the first phase of the remedy. The Department's response to the consultation was published on 28 February 2022.

4.13 From 1 April 2022, all police officers who continued in pensionable service were transitioned to the 2015 reformed scheme, regardless of age. Legacy schemes (The Police Pension Scheme 1988 and Police Pension Scheme 2006) closed in relation to pensionable service after 31 March 2022. This marked the completion of the first, prospective phase of the remedy.

4.14 This consultation focuses on the second retrospective remedy phase. The secondary legislation referred to in this consultation will allow provision for the retrospective remedy to be made. Eligible members will be able to choose to receive legacy pension scheme benefits or benefits equivalent to those available under the 2015 reformed scheme for service during the period 1 April 2015 to 31 March 2022.

4.15 For service during the period 1 April 2015 to 31 March 2022, new provisions will also enable the police pension scheme to:

- correct any overpayment or underpayment of pension benefits or member contributions already paid in relation to a member because of their choice
- facilitate the payment of appropriate compensation to address financial loss arising from the discrimination or operation of the remedy (for example, overpaid tax)

Further Policy and Associated Factors

4.16 Some additional information on further policy development and associated factors regarding tax and contributions which sit outside the scope of this consultation document can be found at **Annex B**.

Terminology

4.17 A glossary of other terms and definitions used throughout this document can be found at **Annex C**.

5. Proposals to be consulted on

The retrospective remedy

5.1 The Department intends to make and lay the regulations required to implement the retrospective remedy pursuant to the requirements of the PSPJOA.

5.2 A draft set of regulations (**Annex A**) to ensure all eligible members (or their member representative) receive a choice of which pension scheme benefits they would prefer to have for their remediable service, is attached to this consultation.

5.3 The impact of implementing the remedy will vary depending on individual member's circumstances. The police pension scheme will provide active and deferred members with information about the alternative benefits available to them under the remedy through their annual benefits statement. Other members will be provided with information to enable them to make a choice of benefits in a remediable service statement.

Who will be in scope for the proposed changes?

5.4 To be eligible for the retrospective pension remedy, a scheme member must have been in pensionable service under a relevant public service pension scheme both on or before 31 March 2012 and on or after 1 April 2015, without a disqualifying break in service. A disqualifying break in service, is a gap of longer than five years in the remedy period.

5.5 Since 1 April 2022, those who meet the above criteria are now eligible for the retrospective remedy. These members can be split into cohorts that may need different treatment:

- active members
- deferred members
- pensioner members
- individuals entitled to dependant and/or death lump sum benefits in respect of deceased members with eligible remediable service

These cohorts will also include members who joined a police pension scheme for the first time after 1 April 2012 but had previous pensionable service in another public service pension scheme on or before 31 March 2012.

5.6 It may also be possible for a member who had opted out of their police pension scheme because of the introduction of the reformed scheme to opt back into the scheme, subject to certain conditions. See the section of this document on Contingent Decisions (paragraphs 5.81 onwards) for further detail.

Who will be out of scope for pension remedy?

5.7 The following members are out of scope for pension remedy:

- members who first joined pensionable public service on or after 1 April 2012.
- members who have had a break in pensionable public service of more than five years.

Legislation

5.8 In November 2021, the Northern Ireland Assembly passed a legislative consent motion in support of the PSPJOA, which subsequently received Royal Assent in March 2022. It provides the necessary powers to make consequential changes to public service pension schemes by 1 October 2023. Chapter 1 of the PSPJOA provides the framework for the remedy, including provision to make changes to public service pension scheme rules. Amendments are required to those rules, including those of the police pension schemes, to implement the Government's remedy. The PSPJOA also provides for the Department of Finance to make DoF Directions⁶, which specify how certain powers under the PSPJOA are to be used by public service pension schemes when making their scheme regulations.

Remedy period and Remediable Service

5.9 The remedy period is the period during which the age discrimination occurred. It began with the implementation of the discriminatory rules on 1 April 2015 and ended when the differential treatment based on age came to an end on 31 March 2022, with the transfer of all remaining members in the legacy schemes to the reformed 2015 police pension scheme. The choice of scheme design (the core of the pension remedy) is only offered in relation to pensionable service which took place in this remedy period.

5.10 Pensionable service, for in-scope members, under a legacy or reformed scheme during the period 1 April 2015 to 31 March 2022 is referred to as 'remediable

⁶ [Directions made under The Public Service Pensions and Judicial Offices Act 2022 | Department of Finance \(finance-ni.gov.uk\)](https://www.finance-ni.gov.uk)

service'. It is important to note that remediable service includes service as a member of a legacy scheme as well as service as a member of the 2015 reformed scheme during the remedy period.

Roll Back

5.11 Roll back is the term used to describe the process by which in-scope members are placed back into the relevant legacy pension schemes. Under the retrospective remedy, all in-scope members will roll back to the scheme to which they would have belonged had the 2015 reformed police Pension scheme not been introduced on 1 April 2015. It is possible that some members may have remediable service in more than one legacy scheme as a result of the roll back.

Deferred Choice

5.12 Deferred Choice (DC) applies to members not yet in receipt of benefits (to include deferred and active members). At retirement they will receive a choice ('make a choice') of either the 2015 reformed scheme benefits, or legacy scheme benefit for any service accrued during the remedy period. The DC is set out in section 10 of the PSPJOA⁷.

5.13 All benefits accrued in the remedy period will be paid from the legacy scheme, regardless of the member choice, but will be calculated according to the scheme that has been chosen. Schemes are obliged to specify a choice election period during which the member must make this choice. This must not be earlier than one year before the date it is reasonably expected that, if a deferred choice is made, new scheme benefits would become payable in relation to the member's remediable service.

5.14 The choice is deemed to take effect immediately before the member becomes a pensioner. Where a member dies in service, the choice is deemed to have taken effect immediately before the member's death.

5.15 If an active or deferred member does not communicate a choice as to which scheme benefits to receive by the end of the choice period, schemes may use the powers in section 12 to determine which scheme benefits to pay.

5.16 A member will be able to request a DC forecast, setting out the pension benefits available to them under the alternative options through a Remediable Service Statement (RSS) and a choice package. The proposal in the draft regulations is that

⁷ [Public Service Pensions and Judicial Offices Act 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

this will be possible between six and twelve months before their intended retirement. Once the scheme manager has provided the package, scheme regulations will provide powers that the member must choose to receive legacy scheme benefits or to receive 2015 reformed scheme benefits within twelve weeks of receipt. A DC will be able to be revoked up until the point of retirement benefits coming into payment.

5.17 The police pension scheme must determine who can make a DC choice for a deceased member on or after 1 October 2023. After that date, where a member dies before making a choice then the member representative makes a choice on behalf of the member.

Immediate Choice

5.18 Immediate choice (IC) applies to pensioner members, or member representatives of a deceased member, who are already receiving benefits (Immediate detriment cases). They will be given a choice as soon as is practicable after 1 October 2023. The PSPJOA requires this process to be completed within 12 months of the member receiving their RSS, or such later time that the Scheme Manager deems reasonable.

Changing a choice

5.19 Section 11(6) of the PSPJOA⁸ provides that no DC may be revoked once benefits have been put into payment. Section 7(1)(c)⁹ also provides that an immediate choice election is irrevocable. Scheme regulations will provide powers for active or deferred members who make a DC by the standard deadline of six calendar months before benefits are due to come into payment, to revoke up until the benefits come into payment. If it is revoked a further choice can be made, as long as it is made before benefits come into payment.

5.20 If a deferred/active member has made a deferred choice and then dies prior to those benefits coming into payment, their choice will lapse. The eligible decision maker will then receive a new RSS and will have three months to make a choice.

Default position where no choice is made

5.21 In cases where a member fails to make a choice, the default position is that legacy scheme benefits would be payable in respect of the remedy period. However, the PSPJOA does provide that pension schemes may include in their rules provision which allows the scheme manager to treat a choice as having been made. The

⁸ Section 11 Public Service Pensions and Judicial Offices Act 2022 (legislation.gov.uk)

⁹ Section 7 Public Service Pensions and Judicial Offices Act 2022 (legislation.gov.uk)

Department has considered whether and how this power should be used in the context of the police pension schemes.

5.22 Given the wide range of benefits offered by the various police pension schemes, and the difficulty of assessing the value which individuals might place on them. In particular, the non-financial benefits (for example, whether benefits are payable to cohabitants and children born after service, pension age and differing ill-health pension provision).

5.23 The Department's approach is that it will be made clear to members that the default option is legacy benefits and so, in most cases, it will not treat a failure to make a choice, as a choice for reformed benefits. To do so would, in effect, substitute the scheme manager's assessment of which scheme would be more beneficial for the circumstances of the member, and this is not considered appropriate.

5.24 Exceptionally, there may be some cases where the scheme manager uses their discretion to make the choice on behalf of the member. In all cases, if no communication from a member as to whether a member wished to make an election is received by the scheme administrator, an investigation will always be carried out to determine all the circumstances prior to any decision being made.

Policy intent

Interest

5.25 The police pension schemes' regulations need to ensure that interest payments are calculated and paid on relevant amounts in accordance with the PSPJOA and DoF Directions.

5.26 There are several specific circumstances in which interest may arise. For example, differences in member contributions and tax relief payable (including missed member contributions), voluntary member contributions, and differences in lump sum paid to members whose benefits are in payment prior to the DC being introduced.

5.27 In line with DoF Directions the 'no netting off' approach for applying interest where a payment of interest needs to be made, the scheme manager will individually apply interest to any debit and credit, and these figures will be added together to reach the final interest liability. The approach ensures that members who have been paid the incorrect amounts on any of their pension, including pension contributions or in instances where they have been overpaid pension benefits, are not placed in an advantageous or disadvantageous position as a result of the retrospective phase of the remedy.

5.28 A 'netting off' approach, where payments in different directions could offset each other before applying interest was considered, but ultimately rejected. This is because a 'netting off' approach before applying interest may result in less favourable monetary amounts for a member, which would go against the general principle of setting interest payments in the retrospective remedy context.

How will this work for immediate choice?

5.29 The regulations make provision for a pensioner member (or the member representative making a choice on behalf of a deceased member) to choose to receive the alternative benefits in respect of their remediable service.

5.30 Member contributions due will be based on the immediate choice (or, if the member is deceased, the choice made by the member representative on behalf of the member) at rectification, with interest applied to overpayments and underpayments separately and only the final results are netted off.

How will this work for deferred choice?

5.31 If a member chooses 2015 reformed scheme benefits at retirement through the DCU, the difference in contributions between those paid and those due will be corrected, with interest applied to the calculated amounts owing or due individually, in line with DoF directions on interest.

5.32 There may be a subsequent correction for some members at retirement. Please see the section of this document on contributions (5.53) for further information on this.

5.33 Where members have over-paid contributions and have chosen not to take the compensation¹⁰ upon implementation of the retrospective remedy, they may be due compensation if at retirement they choose the scheme with the lower contributions.

5.34 Whether a member is due compensation or must pay more contributions upon implementation of the retrospective remedy (or at a later date), the interest will be calculated based on the difference between net contributions after tax that should have been due and those that were paid.

¹⁰ This is usually if they expect to take 2015 reformed scheme benefits for their remedy period service when they make a deferred choice election.

Annual Benefit Statements / Remediable Service Statements

5.35 The PSPJOA requires that the scheme manager issues members with a Remediable Service Statement (RSS). Section 29 of the PSPJOA¹¹ and direction 20 of DoF Directions¹² set out what must be included in such statements.

5.36 This legislation also covers who is entitled to an RSS, the timeframe within which the first RSS may be sent following the implementation of the remedy, and the frequency with which different categories of member receive them, after that point.

5.37 The purpose of an RSS is:

- to provide a member with the information they require to make a choice between legacy and reformed scheme benefits.
- to start the process for making various choices for IC members.
- to provide an opted-out member with information they require to decide whether to opt back into the scheme.

5.38 Scheme managers must ensure that eligible retired, active and deferred members or member representatives are issued with information about their pension benefits that includes remediable service. This will either be through the pre-existing Annual Benefit Statement ('ABS')¹³ process (active and deferred members) or via a dedicated RSS (for example, where a member has retired).

5.39 An ABS provides members with an overview of their current pension accrual. An RSS will do much the same but is provided for, by the remedy regulations. This type of statement has to include the alternatives for pension accrual during the remedy period under both reformed and legacy schemes.

How will this work for deferred choice?

5.40 The current business as usual procedure for issuing ABS will continue to apply for active and deferred members. Existing legislation allows for an annual exercise to be completed to issue the ABS either by electronic method or post. Existing legislation also allows for deferred members to request a paper statement once a year.

¹¹ [Section 29 Public Service Pensions and Judicial Offices Act 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

¹² [Directions made under The Public Service Pensions and Judicial Offices Act 2022 | Department of Finance \(finance-ni.gov.uk\)](https://www.finance-ni.gov.uk)

¹³ An Annual Benefit Statement (ABS) is issued annually, and shows an estimate of the member's pension benefits, up to 31 March of the current year.

5.41 The police pension scheme proposes to follow the current procedure for issuing an ABS as it would be beneficial to retain the current process to help minimise any changes and reduce the costs, but the statement will include an overview of the two options available under the DC (legacy and the reformed schemes). Active and deferred members will also be able to request an RSS in the run-up to retirement if they so wish.

How will this work for immediate choice?

5.42 Under the RSS, all eligible members or member representative of eligible deceased members with IC, will have to be given a calculation of the alternative scheme benefits. For pensioner members with remediable service (including where the member has subsequently died), the scheme manager will be required to calculate alternative scheme design benefits.

5.43 This will need to include information about when a benefit would become payable. If there are any calculations that rely on factors (such as those relating to commutation or late/early retirement) these should use the appropriate factors that were in place at the time of the member's original retirement date. The overarching approach could lead to an increase, a decrease or no change in the benefits already received, and that could then lead to implications for a member's tax liabilities.

5.44 The Department proposes that the administrator provides eligible members with an RSS within eighteen months of 1 October 2023.

Transfers

5.45 As a consequence of all remediable service being rolled back into the legacy scheme, any pension transfers accepted into the reformed scheme during the remedy period, scheme regulations must have provisions to be able to deal with them at the point the member makes a choice.

5.46 Section 21 of the PSPJOA¹⁴ provides powers which;

- i. determine what happens to transferred-in service. This allows transfers-in to move into the legacy scheme (and equivalent benefits provided) but do not require it.
- ii. alter any transfer-in made in relation to remediable service in another public service scheme or any transfer made between the closing date and 31 March 2022.

¹⁴ [Section 21 Public Service Pensions and Judicial Offices Act 2022 \(legislation.gov.uk\)](https://legislation.gov.uk)

5.47 The powers include varying a transfer-in to provide equivalent rights under an alternative eligible scheme or extinguishing the transferred in rights and providing equivalent or alternative rights under an eligible scheme or varying the rights dependent on any choice under section 6¹⁵ or section 10¹⁶ of the Act.

5.48 As a standard approach at the point a choice is made, the following will apply:

- i. if a member chooses 2015 reformed scheme benefits for the remedy period, then the current rules continue to apply, and no changes to the transfer will be required.
- ii. if a member chooses legacy scheme benefits for the remedy period, the following will apply:
 - o the transfer buys equivalent service in the legacy scheme (where the transfer is allowed).
 - o if that is not allowed or possible, the transfer becomes associated with any service post 1 April 2022 based on an actuarial calculation, where applicable.
 - o if the current rules at the time would not allow all the transfer or loses part of the transfer value due to breaching the pensionable service cap in the legacy scheme and has no 2015 reformed pension scheme service, a member will be paid equivalent value in the legacy scheme benefits as an adjustment of contributions accordingly based on an actuarial calculation.

Added Pension

5.49 Across the reformed public service pension schemes there are a range of voluntary additional benefits to members. As the service in the remedy period must be put back in the legacy scheme, any voluntary contributions for such additional benefits must be addressed in implementing the remedy.

5.50 In the 2015 police reformed scheme, Added Pension ('AP') is the only available voluntary additional benefit. It can be purchased either by one-off lump sum payments or by making periodic payments of a particular amount. AP is not available in the police legacy schemes. The Department have considered various ways of converting to alternative benefits in the legacy scheme, but all the options either have restrictions on them that mean they cannot be guaranteed to apply in all cases or lead to a difference in treatment between cohorts of members.

¹⁵ [Section 6 Public Service Pensions and Judicial Offices Act 2022 \(legislation.gov.uk\)](#)

¹⁶ [Section 10 Public Service Pensions and Judicial Offices Act 2022 \(legislation.gov.uk\)](#)

5.51 The Department's proposal, therefore, is that all eligible police pension scheme members and member representatives with AP and remediable service, will be given a 'refund' or 'return of contributions'. This will be achieved in the form of compensation equivalent to the contributions paid, less the amount representing the tax relief from which the member benefitted, plus any interest due. The original choice by the member to purchase added pension will effectively be made null and void.

5.52 In this proposal, a member would not be required to apply for compensation. However, it may be helpful to a member in managing their situation at roll back, if they can make decisions about the timing of compensation payments as many will have contribution adjustments that they may prefer to offset the compensation against.

Contributions

5.53 Employee contributions paid by a scheme member may need to be adjusted where:

- There is a difference in contributions rates between the legacy schemes and 2015 reformed scheme, whether for members in general or for certain categories of member
- A scheme member had tapered transitional protection, and they paid both legacy scheme and 2015 reformed scheme contributions during their remediable service (because taper-protected members are not allowed to retain a mix of legacy scheme and 2015 reformed benefits for the remedy period).

5.54 The current contribution rates for the legacy 1988 scheme, are higher than those in the 2015 reformed scheme. This means that members who are returned at roll back to the 1988 legacy scheme for their remediable service will immediately owe the difference in contributions.

5.55 Conversely, the current contribution rates for the 2006 scheme are lower than those in the 2015 reformed scheme. This means that members who are returned to the 2006 scheme for their remediable service will immediately be owed the difference in contributions paid as compensation.

5.56 It is possible that most eligible members may have a contributions adjustment. This is set out in more detail in the paragraphs that follow.

How will this work for deferred choice?

5.57 Once eligible members have been returned to their relevant legacy pension scheme for their remediable service, members will have a contributions adjustment record.

5.58 Members can have any compensation due to them at the point of roll back, or they can keep the adjustment on record, but this must be paid to a member or a member representative at the point of benefit crystallisation¹⁷.

5.59 Members can pay any monies owed at the point of roll back or they can keep the adjustment on record, but this must be paid by a member or a member representative at the point of benefit crystallisation and deducted from the pension benefits.

5.60 The calculations of contribution adjustments will take into account any tax/tax relief and the appropriate interest (in line with section 26 of the PSPJOA¹⁸ and DoF Directions¹⁹).

5.61 There may need to be a final contributions adjustment, particularly where a member dies before retirement and a DC is then made (for example, by their personal representative). When a DC is made in respect of a deceased member, this will be treated as taking effect immediately before the member's death.

5.62 Where a member who has received compensation, subsequently makes a deferred choice option for 2015 reformed scheme benefits and, as a result, owes member contributions to the scheme, that amount will be by lump sum at the point of benefit crystallisation and deducted from the pension benefits.

How will this work for immediate choice?

5.63 This applies to pensioner (and deceased) members²⁰:

- who were unprotected members and wish to receive legacy benefits, having been in the new scheme
- who were fully protected members and wish to receive 2015 reformed scheme style benefits
- who received “tapered” protection and moved to the 2015 reformed scheme after 1 April 2015 but during the remedy period – these members must decide

¹⁷ The point when a member's pension is put into payment.

¹⁸ [Section 26 Public Service Pensions and Judicial Offices Act 2022 \(legislation.gov.uk\)](#)

¹⁹ [Directions made under The Public Service Pensions and Judicial Offices Act 2022 | Department of Finance \(finance-ni.gov.uk\)](#)

²⁰ See glossary for definitions of ‘unprotected, fully and tapered’ protection.

whether to receive legacy scheme or 2015 reformed scheme style benefits for the entirety of the remedy period

5.64 Where members have overpaid contributions, the Department proposes to compensate the member for the difference between what has been paid and what (retrospectively) is owed. Members who have underpaid contributions will be required to pay any shortfall in member contributions to the scheme, and this will be deducted from their pension benefits.

5.65 Where contributions need to be adjusted, the Department proposes that there will be a single correction (compensation payment or recovery payment) in respect of pensioner/deceased members. This will occur after the pensioner member, or the person making the decision on behalf of the deceased member, has either made an immediate choice selection to receive benefits modelled on the 2015 reformed scheme or, where no option is made, after the time limit for making an immediate choice has passed.

5.66 The PSPJOA does not allow a mix of legacy and reformed scheme benefits for remediable service. If an eligible member is already in receipt of mixed service benefits, there is a provision that maintains the monetary value of the benefits within certain parameters.

5.67 The calculation of contribution adjustments will take into account any tax/tax relief that cannot be dealt with otherwise and the appropriate interest (in line with section 26 of the PSPJOA²¹ and DoF Directions²²).

Tax relief on contributions

5.68 At the point of paying pension contributions, members are entitled to receive tax relief on their pension contributions. This tax relief is only available to individuals who are active scheme members at the point that contributions are paid and is based on the individual's marginal rate of income tax at the time when the pension contributions are paid. Former members will have to have the tax relief included in the calculation – the outstanding contributions will always be offset against benefits due to be paid under the scheme.

Honoraria

5.69 Senior ranks in the police pension schemes can choose to have an honorarium in lieu of pensionable pay. However, in the 2015 reformed scheme, where slower

²¹ [Section 26 Public Service Pensions and Judicial Offices Act 2022 \(legislation.gov.uk\)](https://legislation.gov.uk)

²² [Directions made under The Public Service Pensions and Judicial Offices Act 2022 | Department of Finance \(finance-ni.gov.uk\)](https://www.gov.uk/government/consultations/directions-made-under-the-public-service-pensions-and-judicial-offices-act-2022)

accrual means tax charges are less likely, officers are more likely to receive such amounts as pensionable pay (from which they are paying contributions).

5.70 When a member moves from the 2015 reformed scheme back to their legacy scheme and the relevant legacy scheme is the 1988 scheme, and the member notifies the scheme that they would have chosen an honorarium had they not been moved to the 2015 reformed scheme, the contributions they have paid on their pensionable pay in lieu of an honorarium would need to be refunded, with the relevant interest applied.

Ill-Health Retirement

5.71 The police pension schemes pay out a range of ill-health retirement ('IHR') benefits to members who are unable to continue working as a police officer due to being permanently disabled/permanently medically unfit.

5.72 To qualify for an ill-health pension, a police officer must be permanently incapable of performing the ordinary duties of a member of the service. To qualify for an additional higher-tier ill-health pension (in addition to a lower-tier ill-health pension) a member must also be incapable of undertaking any other regular employment.

5.73 Any legacy scheme members who have transitioned into the 2015 reformed scheme before being ill-health retired would have been dealt with under the 'single source' ill-health arrangement.

5.74 The 'single source' ill-health arrangements provide that a member who has transitioned into the 2015 reformed scheme from the legacy 1988 and 2006 schemes becomes entitled to an ill-health pension that is all payable out of the 2015 reformed scheme.²³ This is made up of a pension in respect of the member's legacy scheme service (this meaning a member receives an equivalent to the legacy scheme, but without any ill-health enhancement for 2015 reformed scheme or future service), and the ill-health pension paid from the 2015 reformed scheme. The full pension payment is then paid under the 2015 reformed scheme regulations. The higher-tier calculation in the member's legacy scheme is turned off (where it exists), and any entitlement to a higher tier pension is calculated entirely in accordance with the 2015 reformed scheme regulations.

How will this work for immediate choice?

5.75 Re-assessment is only needed for IC IHR cases. This means a retrospective ill-health assessment will only be needed for cases where a member (who has remediable service) has already been ill-health retired before the implementation of remedy. In some cases, it may be a better choice for the member to have the pension

²³ This is up until "Normal Pension Age" in the legacy scheme, at which point the benefits revert to being paid out of the relevant scheme (i.e. some from legacy and some from reformed).

for the remedy period paid as it would have been under the 2015 reformed scheme single source arrangements. This will mean that these members will still technically be put back in their legacy scheme for the remedy period, but the payments will be as if calculated on the single scheme basis.

Abatement

5.76 Abatement applies in the legacy schemes for the police pension schemes. It does not apply to the reformed police pension schemes. It is a process which occurs when a member who has taken their benefits, returns to be a police officer again, and the service/force that is paying the pension chooses to reduce or stop it altogether while the member is receiving pay as a police officer again.

How will this work for immediate choice

5.77 Abatement, following the implementation of the remedy will more immediately affect those who have already retired.

5.78 Section 6(4)(a) of the PSPJOA²⁴ provides for no changes to 2015 reformed scheme benefits unless no election has been made by the end of the election period. If a member is in receipt of 2015 reformed scheme benefits and makes an election, no adjustment to abatement will occur. It's only if a member chooses legacy scheme benefits or the default applies that they would see a change.

5.79 Where an individual who retired from the PSNI and has been re-employed in another UK police force during the remedy period, is moved back to their legacy scheme for the remedy period, abatement may then apply. The legacy schemes provide for abating pension where a member re-enters employment.

5.80 As a result of the way the protections worked for the police, there should only be a very few members that will need to consider further abatement applying as part of their remedy choice.

Contingent decisions

5.81 A contingent decision is a decision taken by a member, relating to their membership of the police pension scheme, that would have been different had it not been for the discrimination identified by the courts. This decision is time limited by a year from the issue of the RSS or, if later, within such time as the scheme manager considers reasonable in all the circumstances.

²⁴ [Section 6 Public Service Pensions and Judicial Offices Act 2022 \(legislation.gov.uk\)](#)

5.82 For all contingent decisions, a key principle is that the member needs to make a claim to the scheme. The police pension scheme may use a template form or a bespoke form for scheme members to complete. It is the responsibility of the scheme to consider what needs to be done to alert members to the claim process. The members must confirm the decision that was made and what they would have done differently had they been able to remain in their legacy scheme or join the 2015 reformed scheme earlier.

5.83 Evidence to support the claim should be submitted with the claim form (if available). The member may also, or instead, highlight information provided in the years before or during the remedy period about the member's intentions. For example, their continued membership and retirement intentions, including at the time of an original request to leave or not to join the scheme, which is held by the scheme administrator or employer or, an opt-out form that asks for a reason for opting-out which might serve as evidence.

5.84 On receipt, the scheme manager considers whether the member qualifies for the contingent decision process, for example, for opt-out cases would they be in-scope for remedy if the contingent decision was reversed.

5.85 There are four categories of contingent decisions in the police pension scheme:

- i. *Opt-out*: A member would not have opted-out if they had been allowed to remain in the legacy scheme beyond their transition date or if protected members had been allowed to join the reformed scheme from 1 April 2015.
- ii. *Transfers*: Members chose to transfer (in or out) and now wish to revisit the decision, or they chose not to transfer and now wish to do so.
- iii. *Additional Service*: Members argue they would have purchased (more) additional service if they were in the alternative (legacy) scheme.
- iv. *Honoraria*: Members say that if they had been in the alternative (legacy) scheme that they would have chosen an honorarium.

Opt-outs

5.86 Members who made a choice to opt out directly relating to the pension reforms prior to their transition date will be able to elect to pay the missing contributions for the opted-out period of remediable service.

5.87 Section 5 of the PSPJOA²⁵ allows remediable service to be reinstated but does not provide the power to reinstate any service pre or post the remedy period. Where a member can demonstrate to the scheme that they had a compelling and reasonable case to do this, schemes will need to use provisions in existing scheme rules to opt in in respect of any pre or post remediable service.

5.88 For post-remediable service, as all members have been part of the 2015 reformed scheme since 1 April 2022, there would be nothing preventing a member opting back in for post 1 April 2022 service. Members do not need to wait for the retrospective remedy to do this.

5.89 The timings of opt-out can demonstrate to scheme managers the opt-out is directly related to the pension reforms. For members who made a choice to opt out within six full pay periods immediately prior to the transition on 1 April 2015 to the 2015 reformed scheme and at any time during the remedy period, the scheme manager can be satisfied that members may have made a different decision in relation to the remediable service, were it not for the discrimination. These members should now be given the option to pay missing contributions for all of the opted-out remediable service.

5.90 In other cases when the opt-out is outside of the remedy period and three months prior, there needs to be contemporaneous evidence that states the reason for opting-out relates to the reforms. Examples are:

- the member had explicitly made clear (for example, in correspondence) that they did not believe the 2015 reformed scheme was worth the contributions they would have had to pay for membership, for example, because of the higher pension ages and implications for pensions taken before NPA
- a complaint letter confirming opt-out will follow if reform is implemented and opt-out request is received within reasonable timescale
- if a member was a litigant in an ‘injury to feelings’ claim

Additional service

5.91 The police legacy schemes allowed members to buy additional service (either as 60ths or years, depending on the scheme). Remedy-eligible members who would have been able to buy additional service during the remedy period will be able to elect to buy additional service under the terms that would have been available at the time, in line with the following:

²⁵ [Section 5 Public Service Pensions and Judicial Offices Act 2022 \(legislation.gov.uk\)](#)

- i. Any contributions that should have been made will have to be paid with interest added.
- ii. The closure of the legacy schemes by 1 April 2022 will not qualify members under the additional service rules. A member's circumstances must mean that they would have qualified, had they been in the legacy scheme at the time without anticipating the closure of the scheme by 1 April 2022.
- iii. The additional service contract will apply from the next birthday in the remedy period which falls after the member's transition date, unless the member has evidence for a different date, such as taking out an additional pension contract in the 2015 reformed scheme in the remedy period. In such a case it will apply from the nearest birthday in the remedy period to that date.

Transfers

5.92 This is where members chose to transfer (in or out) during the remedy period and now wish to revisit the decision, or they chose not to transfer into the 2015 reformed scheme but would have transferred had they been in their legacy scheme.

5.93 Members who have not transferred and who could have done under the legacy scheme rules and now wish to transfer, scheme regulations will provide powers for a window to transfer in/reverse it.

5.94 Any reversing will depend on the sending/receiving scheme agreeing to reverse the transfer. There will need to be contemporaneous evidence that states the reason for any reversal relates to the reforms.

Honoraria

5.95 Police Officers who decided to receive an honorarium instead of additional pay or pay instead of an honorarium in the remedy period will be eligible to make a contingent decision claim to have the opposite applied. This will be dealt with through the adjustment of contributions (see contributions section in this consultation at 5.53).

Divorce

5.96 Pension rights can be a valuable asset and, consequently, the value of any pension rights must be considered as part of a divorce settlement or on the dissolution of a civil partnership. Once pension assets have been identified and valued, a couple must agree how to use this value in any financial settlement.

5.97 There are three options for using the value of those pension rights in any financial settlement:

- i. Offsetting the value of the pension benefits against other matrimonial assets.
- ii. A pension sharing order (PSO).
- iii. An earmarking order (EO) in Scotland or a pension attachment order (PAO), formerly known as an EO, in England and Wales.

5.98 The PSPJOA does not make any specific provision in relation to pension offsetting or pension attachment orders.

5.99 PSOs rely on the member providing a Cash Equivalent Transfer Value (CETV) that can be taken into account when deciding how assets should be split. The CETV may be different under the legacy and 2015 reformed schemes, so there needs to be a recalculation for PSOs that have been applied in respect of police pension scheme members since 1 April 2015 up to implementation of the remedy, and there is a continued need for remedy to factor into the calculations for PSOs that occur after 1 October 2023.

5.100 Where there is a pension in payment and the member opts for a lower pension, meaning that in principle there would have been overpayments to the member and/ or ex-spouse, there will be no liability for overpayments from the ex-spouse which arise as a result of the member's choice of benefits.

How will this work for cases that arose before implementation?

5.101 Where a pension is already in payment, or where a member is still active or deferred, it is possible that the CETV which was used to determine the value of the member's pension and how it should be offset against other assets should have been lower or higher, in line with the member's choice of benefits. If it is higher than the CETV originally calculated, a portion of the additional amount in the same proportion as specified in the PSO will be converted to an additional pension credit and awarded to the pension credit member.

How will this work for cases that arise after remedy implementation?

5.102 Where a case arises after implementation, the CETV will reflect the greater value available to the member. The member's pension could still change depending on their choice at retirement, but their ex-spouse will be unaffected.

5.103 Where a divorce takes place after the member has already retired and decided on the benefits, they wish to receive in respect of their remediable service, the value of the pension will reflect the choice the member has made.

Bereavement and Child Pensions

5.104 Sadly, some eligible members may have died before they have made a choice in respect of their remediable service.

5.105 If the eligible deceased member had not made a choice, then relevant scheme regulations may include a provision about who may make a choice in relation to remediable service for an eligible deceased member. The member representative will make a choice of either legacy scheme accrual or equivalent new scheme benefit accrual for the deceased member's remediable service. This applies both in cases where benefits that we are already in payment before 1 October 2023 and to cases where a member died in service or while deferred on or after 1 October 2023.

5.106 The member representative will make a specific choice to confirm their decision as to whether to accept legacy scheme or equivalent new scheme accrual for the deceased member's remediable service, for the survivors' benefits.

5.107 Where a pensioner member dies after their choice and their benefits have crystallised (typically where the member's pension is put into payment), the member representative is not entitled to make a second choice or to revoke a choice already made by the deceased eligible member.

5.108 The member representative will be (depending on the circumstances of the specific case):

- an adult survivor (that is, a surviving spouse/civil partner/life partner) • personal representatives (that is, an executor).
- a parent/guardian of surviving children.
- an adult surviving 'child'.
- a person agreed upon by parents/guardians and/or adult surviving "children" and (if applicable) parents/guardians to be the member representative.
- the scheme manager.

5.109 If the member representative is not the legal parent or guardian of the relevant children, or not the person agreed upon by the legal parent or guardian, their decision might involve reducing the children's pensions in payment. The regulations will ensure

that, in such cases, any child pension that is already in payment is not reduced as a result of the member representative's decision. This is based on the powers in section 22 of the PSPJOA²⁶.

How will this work for deferred choice?

5.110 Active and deferred eligible members will be able to choose between legacy and equivalent new scheme benefit accrual for their remediable service at the point they make an application to receive retirement benefits. If they die before the pension crystallises, a member representative will make the DC.

5.111 There is a deadline before which the eligible member or member representative must make a DC, and a default action if a choice is not made within the deadline.

How will this work for immediate choice?

5.112 The survivor of someone who was eligible to make an immediate choice (but had not yet made it) will be able to make a choice. Once a choice has been made and implemented by the member, the survivor has no further choice.

Overpayments and Underpayments – Pensions in Payment

5.113 Where a pension is in payment before a choice is made, and the member makes a choice which results in a change to benefits payable, the change to the pension benefits is backdated to the point when pension benefits initially became payable. A process of reconciliation will be necessary to ensure that the member has received the correct amount of pension over time, and this may result in one of the following situations:

- underpayments, resulting in payments from the scheme to the member (for example, added pension or lump sum)
- overpayments that have been made by the scheme to the member and which have to be repaid.

5.114 Interest will be both payable on arrears owed to members and charged in relation to overpayments. A detailed explanation of interest policy can be found in DoF Directions.

5.115 Section 14 of the PSPJOA²⁷, provides that pension overpayments must be repaid to the scheme. However, the PSPJOA also provides that scheme manager may decide whether to waive all or part of any such liabilities owed to the scheme.

²⁶ [Section 22 Public Service Pensions and Judicial Offices Act 2022 \(legislation.gov.uk\)](#)

²⁷ [Section 14 Public Service Pensions and Judicial Offices Act 2022 \(legislation.gov.uk\)](#)

DoF Directions set out factors to be considered by the scheme when considering whether to waive or reduce any such liability by the member and that the principles set out in Managing Public Money²⁸ should be followed.

5.116 Accordingly, the scheme manager must have regard to the circumstances of the member and (if different) the person by whom the amounts are to be paid. The scheme manager can choose to reduce or waive the liability. In addition, the scheme manager must consider if it is appropriate to allow the member to pay the liabilities in instalments. In reaching a decision, the following will be considered:

- whether the liability has arisen as a result of an immediate choice or a deferred choice option.
- whether the member is deceased.
- whether, in the reasonable opinion of the scheme manager, payment of the liability in full or in part would result in unreasonable hardship.
- whether, in the reasonable opinion of the scheme manager, there are any other exceptional circumstances which mean the liability should not be paid in full or in part.

²⁸ [Managing Public Money NI \(MPMNI\) | Department of Finance \(finance-ni.gov.uk\)](#)

6. Impact Exercises

Equality

6.1 Section 75 of the Equality Act (NI)²⁹ statutory duties aim to encourage public authorities to address inequalities and demonstrate measurable positive impact on the lives of people experiencing inequalities. Its effective implementation should improve the quality of life for all of the people of Northern Ireland.

6.2 Section 75 requires public authorities to have due regard for the need to promote equality of opportunity between:

- persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation
- men and women generally
- persons with a disability and persons without
- persons with dependants and persons without

6.3 Department of Finance has conducted an equality impact assessment, which considers the impact of the overarching policy, powers and requirements associated with the PSPJOA.

6.4 Stakeholder engagement and informal consultation have supported the Department in identifying any potential risk of adverse impacts in relation to the protected characteristics. Such stakeholder engagement includes engagement with UK police sector employer and employee representatives, other government departments and devolved administrations. Through police pension scheme membership, all members in scope for the remedy will have equal access to the remedy, irrespective of any protected characteristic that may apply to them.

6.5 The Department have carried out an Equality Impact Assessment ('EQIA') screening exercise when considering the drafting of these regulations. The purpose of this screening was to identify those policies that are likely to have an impact on equality of opportunity and/or good relations and so determine whether an EQIA was necessary.

6.6 The Department commissioned the Government Actuary Department ('GAD') to carry out detailed analysis on the equality impact of implementing the remedy. This analysis concluded that the draft regulations proposed will have no adverse impact. As the draft regulations are designed to resolve unlawful discrimination, any impacts should be positive and not detrimental to any member. On the basis of this conclusion a full EQIA was screened out.

²⁹ Section 75 of [Northern Ireland Act 1998 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

Data Protection

6.7 The Department have carried out a Data Protection Impact Assessment ('DPIA') screening when considering the drafting of these regulations. As these draft regulations do not require the Department to process individual's personal information a full DPIA has been screened out.

Rural Communities

6.8 The Department give consideration to a Rural Needs Impact Assessment as part of the implementation of these proposed regulations. It identified that there would be no significant adverse or differential impact on people living in rural communities compared with those in an urban setting.

7. Responding to this consultation

1. The consultation will run from 16 March 2023 for a period of 12 weeks and all responses should be submitted by 11 p.m. on 7 June 2023.

2. Responses to this consultation should be made online via the link below:

[Consultation on the Draft Police Pensions \(Remediable Service\) Regulations \(Northern Ireland\) - NI Direct - Citizen Space](#)

3. The online consultation proposes a number questions which are outlined at section 8 of this document.

Enquiries

4. Please submit any enquiries to:

Police Human Resources Policy Branch
Department of Justice
Castle Buildings
Stormont Estate
Belfast, BT4 3SG

Email: DOJSMPPHRPB.Correspondence@justice-ni.gov.uk

Alternative Formats

5. An electronic version of this document is available from the Police Human Resources Policy Branch. Hard copies of the document and copies in other formats (including Braille, large print etc.) can be made available on request. If it would assist you to access the document in an alternative format or language other than English, please contact Police Human Resources Policy Branch who will attempt to assist you.

8. Consultation questions

The Department invites responses to this consultation via the link below:

[Consultation on the Draft Police Pensions \(Remediable Service\) Regulations \(Northern Ireland\) - NI Direct - Citizen Space](#)

The Department requests that you do not provide any personally identifiable information (for example, names, dates, and locations) in your answers to the following questions.

1. In and out of scope:

Do the proposed amendments to scheme regulations clearly define which members of the police pension schemes meet the criteria to be eligible for the remedy?

2. Deferred Choice Underpin (DCU) and Immediate Choice (IC):

Are there any other areas which you think should be addressed in these regulations in order to ensure that all eligible members receive a choice of pension benefits at their point of retirement, for the period for which the discrimination existed (1 April 2015 to 31 March 2022), from 1 October 2023?

3. DCU timing of Remediable Service Statement (RSS):

Do you think the policy proposals about the timing of when a scheme member can request a Remedial Service Statement (RSS) in anticipation of retirement strike the right balance between a suitable period to make a decision, proximity to retirement date and any administrative considerations?

4. RSS:

Do you think the policy proposals in relation to scheme members receiving an RSS achieves what is in Section 29 of the PSPJOA and Direction 20 of DoF Directions?

5. Transfers:

Do you think that the policy proposals that transfers that came into the 2015 reformed scheme will be held in the 2015 reformed scheme until the point of decision achieves the policy intention of preserving transfer rights?

6. Added pension:

Do you think the policy proposals in relation to scheme members with added pension puts all eligible members in the same position?

7. Contributions:

Do you think the policy proposals in relation to scheme members contribution adjustments is in line with section 26 of the PSPJOA 2022 and DoF Directions?

8. Ill-health Retirement:

Do you think the proposed arrangements for members that qualify for ill-health retirement during the remedy period (1 April 2015 to 31 March 2022) may cause any adverse impacts?

9. Abatement:

Do you think the policy proposals in relation to scheme members abatement achieves the correct position the member would have been in had they not transitioned to the reformed scheme?

10. Contingent decisions:

Do you think that the proposals with regards to contingent decisions give members opportunities to revisit pension benefit decisions taken during the remedy period?

11. Divorce:

Do you think the policy proposals in relation to the calculation/recalculation of CETV figures to be used with pension sharing orders members achieve an outcome that recognises the impact of remedy on such calculations?

12. Bereavement and Child Pensions:

Do you think the proposed amendments to scheme regulations achieve the policy intention of ensuring that the resulting 'member representative' can make an immediate choice or deferred choice in relation to the remediable service of a deceased member?

13. Additional Comments

Are there any additional points not covered in this consultation paper that need to be considered as part of the McCloud Remedy proposed amendments to scheme regulations?

14. Equalities:

Do you think the proposed amendments unlawfully discriminate against a particular protected characteristic, fail to advance equality of opportunity between those who share a protected characteristic and those who do not, or fail to foster good relations between people who share a protected characteristic and those who do not?

9. Conclusion and next steps

1. The purpose of the retrospective remedy is to remove past age discrimination for the remedy period and place all police pension scheme members in the position they would have been in before the discrimination occurred. However, police pension scheme members may consider that 2015 reformed scheme benefits are more suited to their circumstances and the retrospective remedy allows them to choose which scheme design should apply to them for the remedy period. Information will be provided to each member to allow them to make a choice within a specified timeframe.
2. The retrospective remedy marks the final phase of removing the discrimination arising as a result of protections provided under the reformed schemes for older police pension scheme members when introduced in 2015. This consultation explains the policies that are required to implement the remedy and seek comment on specific aspects of those policies. The legislation required to amend the rules of the police pension schemes will be made in September 2023 and come into operation on 1 October 2023.
3. Eligible police pension scheme members who have already retired and/or received a pension award will be asked to make their choice as soon as is practicable after the changes are implemented. The position they choose would be applied retrospectively back to the date the award was made.

ANNEXES TO THE CONSULTATION

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Draft Regulations

The Draft Police Pensions (Remediable Service) Regulations (Northern Ireland) is 2023 attached separately to preserve the integrity of the document.



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Pensions (Remediable

Further Policy and Associated Factors

Taxation

As a result of the remedy, members may face changes to their individual tax situation. The remedy may impact a member's Annual Allowance (AA), Lifetime Allowance (LTA)³⁰ and any benefits in payment. For most members no tax adjustment will be required. However, a minority of members may see changes to their individual tax situation. Some elements of taxation policy remain under development, and guidance will be provided by HMRC.

Compensation

The Act provides that compensation may be paid by the scheme where a member (or their personal representatives) has incurred compensable losses. The power to pay such compensation can only be exercised in accordance with DoF Directions and in respect of categories of loss defined in the DoF Directions³¹. The relevant DoF Directions came into operation on 09 February 2023 and deal with compensation in Chapter 3 of Part 2.

These Directions set out the factors to which the scheme must give regard when considering whether compensation may be appropriate. Any compensation payable is not designed to give members a financial advantage but to return them to the position they would have been in had the discrimination not occurred. They also define the type of losses for which compensation may be appropriate.

Generally, under the DoF Directions compensation may be payable in relation to tax losses or for direct financial losses. Payments may be in the form of direct compensation payments to members, or indirect compensation, where the member receives additional benefits.

Indirect compensation in line with the provisions set out in DoF Directions is currently under consideration. Situations where indirect compensation may be payable would include where a member has used scheme pays to pay an Annual Allowance Tax Charge (AATC) or a Lifetime Allowance Tax Charge (LTAC) and the effect of roll back and/or their remedy choice means they have made an overpayment.

³⁰ The Chancellor announced changes to AA and LTA in the Spring Budget [Spring Budget 2023 speech - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

³¹ [Directions made under The Public Service Pensions and Judicial Offices Act 2022 | Department of Finance \(finance-ni.gov.uk\)](https://finance-ni.gov.uk)

Glossary of terms

Term	Meaning
Abatement	If you re-join the police and have a legacy pension in payment, it may be suspended. The 2015 reformed scheme is not subject to abatement.
Accrual	The rate at which pension benefits accrue for each scheme year. Each scheme is different in design and accrual rate
Active Member	A member of the police pension scheme who is currently serving in the police and accruing benefits under the scheme.
Added Pension	2015 reformed police pension scheme only - an amount of extra annual pension that you can buy to increase either your retirement benefits and/or your dependants' benefits.
Additional Service	A way of increasing the benefits you receive (that is, final pension and lump sum) by purchasing extra reckonable service (legacy schemes only).
Annual Allowance (AA)	The AA is how much can be saved towards a pension each tax year without a tax charge applying. For Police Forces Schemes this is determined by the capitalised value of the increase in the accrued benefits over the tax year (that is, the growth of the pension in the tax year). The standard annual allowance since 6 April 2016 has been £40,000.
Annual Benefit Statement (ABS)	Your Annual Benefit Statement (ABS) is issued annually and shows an estimate of your pension benefits, up to 31 March of the current year.
Beneficiary	A person who has become entitled to receive any death benefit.
Benefit Crystallisation	Where the member's pension is put into payment.
Career Average Revalued Earnings (CARE)	A CARE scheme delivers a defined benefit pension based on a member's salary in each year of employment, not just their final one. Each year's pension accrual is revalued in line with an index
Cash Equivalent Transfer Value (CETV)	A CETV is the expected cost of providing member's benefits within a scheme. It is

Term	Meaning
	used in pension sharing and pension transfers.
Club Transfer	The Public Sector Transfer Club, also known as the Club, allows easier movement of employees and their pensions from one employer to another. Club members operate mainly within the public sector and rules are governed by the Cabinet Office.
Commutation	When a member gives up part of the pension income in return for a lump sum.
Compound Interest	Compound interest is calculated on the principal amount and the accumulated interest over the period.
Contingent Decision	A decision related to the pension scheme(s) that a member took or did not take as a result of the (actual or perceived) implications of the introduction of the reformed schemes.
Deferred Choice	The choice (or election) made by active or deferred members at the point when pension benefits, including Early Departure Payments, are due to come into payment. Covered under section 10 of the Act.
Deferred Choice Underpin (DCU)	The provision for members to remain in, or be returned to, the legacy schemes for service between 1 April 2015 and 31 March 2022. At the point of retirement (or when benefits become payable) or as soon as practicable (for members who have already had a pension award), members would then be able to choose to instead receive reformed scheme benefits for that period.
Deferred Member	A member of a police pension scheme who has left the force and has a preserved pension or a deferred pension not yet in payment.
Deferred Pension	If a member leaves pensionable employment before the retirement age for that scheme, they will become a deferred member and are entitled to a deferred pension when they reach the relevant Pension Benefit Age for the scheme to which they belong.
Dependant	Collective term to describe a member's spouse, civil partner, eligible partner or eligible child.

Term	Meaning
Election	Collective term used to cover immediate and deferred choice.
Election Period	The period of time within which a member must make a remedy election.
Eligible Child	A child, as defined in the relevant scheme rules, who is eligible for a child pension under the scheme rules.
Eligible Decision Maker	The decision maker, as defined in the relevant scheme, who is eligible to make a decision where the member is deceased.
Eligible Member	A member who meets the conditions to be eligible for remedy.
Eligible Partner	An unmarried partner of the member, who meets certain conditions set out in scheme rules and is therefore entitled to a pension on the same terms as a spouse or civil partner.
Fully Protected Member	A protection introduced in April 2015 which enabled some members of the legacy schemes to remain in those schemes and therefore not become members of the 2015 CARE Scheme. This protection has subsequently been found to have been unlawfully age discriminatory against younger members.
Honoraria	This is a way for a member on temporary promotion to manage whether their temporary pay is pensionable or not.
Ill Health benefits	If you are unfit for duty owing to ill-health or injury, then you may be entitled to ill-health pension benefits. The type of benefits you will receive are dependent upon your individual circumstances, the scheme(s) you belong to and the degree of disability.
Immediate Choice	Under section 6 of the Act members who already have benefits in payment or who have died by the time the remedy is implemented (as entitlement to the payment of benefits in relation to remediable service will have occurred) will be provided with an immediate choice.
In-scope member / Eligible Member	The remedy applies to pension scheme members who were in pensionable public service both on or before 31 March 2012 and on or after 1 April 2015, including those with a gap in service of no longer than five

Term	Meaning
	years. The detailed eligibility conditions are set out in section 1 of the Act.
Internal Dispute Resolution Procedures (IDRP)	An internal dispute process required by the Pensions Act 1995. Under the IDRP process disputes can be considered independently by the Pension Ombudsman if they cannot be resolved internally.
Member	An individual who joined the police pension scheme and is earning benefits under the Scheme (active member), has a deferred pension under the Scheme (deferred member), or is receiving a pension from the Scheme 49 (pensioner member). In some cases this may also include pension credit members of the scheme.
Opting Out	When an individual chooses not to become a member of the police pension scheme, or chooses to leave the scheme, if already a member.
RUC Pension Scheme 1988	The Pension Scheme for police officers, introduced in 1972 and closed to new entrants on 6 April 2006.
Police pension Scheme 2006	The Pension Scheme for police Officers, introduced in 2006 and closed to new entrants on 31 March 2015.
Police Pension Scheme 2015	The Pension Scheme for police Officers who join the force from 1 April 2015, and those members who were already in Service on that date and did not qualify for (unlawful) transitional protection. Since 1 April 2022 it is the only pension scheme available to Police Officers.
Pension Sharing Order	An Order made by the Court on divorce or dissolution of a civil partnership. It awards a share of pension benefits to a former spouse or civil partner, and they become a member of the Scheme in their own right.
Pensioner member	Someone receiving a pension benefit from the Scheme.
Reformed Scheme	Police Pension Scheme 2015
Remediable Service	Any pensionable service that occurs in the remedy period, between 1 April 2015 and 31 March 2022, and which meets the criteria set out in the Act.
Remediable Service Statement (RSS)	A Remediable Service Statement is a document which will clearly show the value

Term	Meaning
	of pension scheme benefits available under the election. Among other information, it will show the default entitlement as the value of legacy pension benefits up to 31 March 22 (or end of service if earlier) and then 2015 Reformed Scheme from that point forward (if there was service after April 22). The alternative will show legacy pension benefits up to and including 31 March 15 and then 2015 Reformed Scheme benefits from that point forward.
Remedy Period	The Government proposed that all eligible members of relevant public service pension schemes would be given the opportunity to choose which model of scheme benefits they would wish to receive (legacy scheme or 50 the reformed 2015 scheme) for the period of 1 April 2015 – 31 March 2022 – known as the remedy period.
Retrospective Remedy	The roll back of members to their respective legacy schemes and a subsequent choice of benefits for the remedy period.
Roll Back	The term used to describe the process by which inscope members are placed back into a relevant legacy pension scheme(s).
Scheme Manager	The Scheme Manager is responsible for managing and administering the police pension schemes. Individual forces are the Scheme Managers for the police pension schemes. Whilst authority is delegated to administrators, overall responsibility remains with the Scheme Manager.
Simple Interest	Simple interest is calculated on the principal, or original, amount and the time period elapsed.
Surviving Adult	A surviving spouse, civil partner or eligible partner dependent on the meaning within individual police pension scheme rules.
Tapered Protection	A protection introduced in April 2015 which allowed some members of legacy schemes to stay beyond 1 April 2015 for a limited period of time. When Tapered Protection ceased, the member moved into the 2015 CARE Scheme.
Transfer value	The value of the member's pension benefits, expressed as a sum of money

Term	Meaning
	when a member requests to transfer between two pension schemes.
Unprotected member	A member of the legacy pension schemes that did not satisfy the conditions for full or taper protection.
DoF Directions	Department of Finance Directions, which are contained in the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions (Northern Ireland) 2022 specify how certain powers under the Act are to be used by public service pension schemes in their scheme regulations.

Privacy, Confidentiality and Access to Consultation Responses

For this consultation, all responses may be published except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations and individuals responding in a professional capacity may be published. Email addresses and telephone numbers will be removed from responses; but apart from this, they will be published in full. For more information about how personal data is handled please see the DoJ consultation privacy notice³².

Your response, and all other responses to this consultation, may also be disclosed on request in accordance with the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR); however, all disclosures will be in line with the requirements of the Data Protection Act 2018 (DPA) and the General Data Protection Regulation (GDPR) (EU) 2016/679.

If you want the information that you provide to be treated as confidential it would be helpful if you could explain why you regard the information you have provided as confidential. This will form part of the consideration if the Department should receive a request for the information under the FOIA or EIR.

³² The DoJ Consultation Privacy Notice is attached at Annex E

Privacy Notice – Consultations (DoJ)

Data Controller Name: Department of Justice (DoJ)

Address: Castle Buildings, Stormont, BELFAST, BT4 3SG

Email: DOJSMPPHRPB.Correspondence@justice-ni.gov.uk

Data Protection Officer Name: DoJ Data Protection Officer

Telephone: (028) 90378617

Email: DataProtectionOfficer@justice-ni.gov.uk

Being transparent and providing accessible information to individuals about how we may use personal data is a key element of the [Data Protection Act \(DPA\)](#) and the [EU General Data Protection Regulation](#) (GDPR). The Department of Justice (DoJ) is committed to building trust and confidence in our ability to process your personal information and protect your privacy.

Purpose for processing

We will process personal data provided in response to consultations for informing the development of our policy, guidance, or other regulatory work in the subject area of the request for views. We may publish a summary of the consultation responses and, in some cases, the responses themselves but these will not contain any personal data. We will not publish the names or contact details of respondents, but will include the names of organisations responding.

If you have indicated that you would be interested in contributing to further Department work on the subject matter covered by the consultation, then we might process your contact details to get in touch with you.

Lawful basis for processing

The lawful basis we are relying on to process your personal data is Article 6(1) (e) of the GDPR, which allows us to process personal data when this is necessary for the performance of our public tasks in our capacity as a Government Department.

We will only process any special category personal data you provide, which reveals racial or ethnic origin, political opinions, religious belief, health, disability or sexual life/orientation when it is necessary for reasons of substantial public interest under Article 9(2) (g) of the GDPR, in the exercise of the function of the Department, and to monitor equality.

How will your information be used and shared

We process the information internally for the above stated purpose. We do not intend to share your personal data with any third party. Any specific requests from a third party for us to share your personal data with them will be dealt with in accordance with the provisions of the data protection laws.

How long will we keep your information?

We will retain consultation response information until our work on the subject matter of the consultation is complete, and in line with the Department's approved Retention and Disposal Schedule [DoJ Retention & Disposal Schedule](#).

What are your rights?

- You have the right to obtain confirmation that your data is being [processed, and access to your personal data](#)
- You are entitled to have personal data [rectified if it is inaccurate or incomplete](#)
- You have a right to have personal data [erased and to prevent processing](#), in specific circumstances
- You have the right [to 'block' or suppress processing](#) of personal data, in specific circumstances
- You have the right to [data portability](#), in specific circumstances
- You have the right to object to the processing [in specific circumstances](#)
- You have rights in relation to [automated decision making and profiling](#).

How to complain if you are not happy with how we process your personal information

If you wish to request access, object, or raise a complaint about how we have handled your data, you can contact our Data Protection Officer using the details above.

If you are not satisfied with our response or believe we are not processing your personal data in accordance with the law, you can complain to the Information Commissioner at:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire SK9 5AF

casework@ico.org.uk