



HM Treasury

Policy Statement

Chapters 1 and 4 of the Public Service Pensions and Judicial Offices Bill

October 2021



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Chapter 1

Introduction

1.1 This Policy Statement relates to the Public Service Pensions and Judicial Offices Bill as introduced in the House of Lords on 19 July 2021 (HL Bill 44). It is intended to supplement the Explanatory Notes and Delegated Powers Memorandum for this Bill.

1.2 It does so by providing further detail as to the policy intent and practical application of certain clauses in Chapter 1 and Chapter 4 of this Bill which deliver key elements of the remedy to the discrimination identified by the Court of Appeal in the *McCloud* and *Sargeant* cases, particularly where these clauses involve powers to make regulations. Clauses where there is no additional background to add beyond what is in the Explanatory Notes and Delegated Powers Memorandum are not covered.

1.3 The retrospective remedy provisions for Judicial and Local Government schemes (Chapters 2 and 3 of the Bill) are not in scope of this document and are described in separate policy statements.

1.4 Part 1 of this document explains what Chapters 1 and 4 of Part 1 of the Bill will mean in practice for pension scheme members. This section includes examples to demonstrate the impact of powers enabled by certain clauses at different stages of a member's journey.

1.5 Part 2 of this Policy Statement seeks to provide clarity on the more complex aspects of the Bill, focusing on elements of the remedy where further detail will follow in scheme regulations.

1.6 This document might best be read alongside the Bill. It is not, and is not intended to be, a comprehensive description of the Bill.

1.7 Examples are included throughout this document to help illustrate the intended practical effects of the Bill's provisions. These are for illustrative purposes only, and in some cases have been simplified. Therefore, in isolation they should not be used as a definitive record of Government policy, not should they be used by members or schemes to assess the impacts of the remedy on particular individuals.

Background

1.8 When reforms to the main public service pension schemes were introduced in 2015¹ the Government agreed, following negotiations with trade unions, to allow certain members closest to retirement age to stay in their legacy schemes for an additional period (or provide a legacy scheme underpin for the Local Government Pension Scheme (LGPS)). This was challenged in the Courts and, in order to address the discrimination identified, Government intervention is required.

1.9 Accordingly, the Bill will allow all eligible members to have a choice between legacy and reformed (i.e. “new”) scheme benefits in respect of their service from the date these new schemes were introduced, usually 2015, to 2022, known as the “remedy period” (or, if they were eligible LGPS members during that period, to benefit from the extension of the LGPS underpin). Eligible members of the main public service pension schemes other than the judiciary and local government who are not already in receipt of a pension relating to their service during the remedy period will make a choice at retirement (described as a “deferred choice”). The deferred choice approach was supported by the majority of respondents to the Treasury’s consultation in 2020.²

1.10 Those who are already in receipt of a pension relating to their service during the remedy period will be offered a choice as soon as practicable, once the legal provisions and operational systems are in place (described as an “immediate choice”). Comparable arrangements will also be operated as soon as practicable with members’ representatives where the member has died before they could personally exercise a choice.

1.11 The nature of the Judicial and Local Government Pension Schemes means that a slightly different approach is taken to the remedy in those schemes. The details are set out in separate policy statements provided by the Ministry of Justice and Department for Levelling Up, Housing and Communities.

1.12 The judiciary will be offered an “immediate choice” as most respondents to the Ministry of Justice’s consultation supported having the ability to make an earlier decision.

1.13 From the point of introduction on 1 April 2015, the reforms made to public service pensions, along with the preceding switch from Retail Prices Index (RPI) to Consumer Prices Index (CPI) for pension uprating and increases in employee contributions, were estimated to save over £400 billion over the following 50 years. To maintain the reforms and ensure equal treatment

¹ 2014 for the Local Government Pension Scheme (LGPS) in England and Wales; 2016 for the Civil Service Other Crown Servants (OCS) Pension Scheme.

² Consultation:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/900766/Public_Service_Pensions_Consultation.pdf.

going forwards, all members will accrue pension in new schemes for service from 1 April 2022 onwards.³

³ The Bill will not provide for further service in employments covered by the main public service pension schemes to be pensioned in legacy schemes after 31 March 2022; but it will allow for two specific exceptions where legacy schemes can continue to provide benefits calculated in relation to service after this date: where service based on final salary is transferred in from schemes other than those subject to remedy, that is schemes other than the main public service pension schemes; and where the accrual of benefits in legacy schemes is weighted in relation to a member's continuous overall service in legacy and new public service schemes.

Chapter 2

Effect of the PSP&JO Bill on the member journey

2.1 This section will set out how specific aspects of the Bill affect members, with impacts detailed in chronological order.

Return to legacy schemes

2.2 On 1 October 2023, or such an earlier date as the Treasury or Department of Finance in Northern Ireland may appoint, members who have remediable service in a new scheme will instead be members of the relevant legacy scheme for that period, known as the remedy period. This will equalise treatment of all members who were affected by the discrimination identified by the Court of Appeal. Facilitating this shift will be the responsibility of scheme managers.

2.3 The scheme to which the member will return will be the scheme that they would have been eligible to participate in had they not moved to a new scheme on or after 1 April 2015. In most cases, members will be returned to the legacy scheme in which they most recently had service, i.e., the legacy scheme that they were in prior to moving to a new scheme in or after 2015. Some legacy schemes have rules preventing a member who opted out of that scheme from rejoining the same scheme. Where a member with remediable service had previously opted out of such a scheme, they will become a member of another legacy scheme, which they would have been eligible to join at the time, in relation to that service. Further detail on opting in is included at paragraphs 3.1 to 3.7.

Remediable service statements

2.4 Within 18 months of Clause 2(1) coming into force, i.e. at the latest within 18 months of 1 October 2023, scheme managers must provide members with a remediable service statement. The deadline can be extended by the scheme manager if they consider this reasonable in all the circumstances in relation to a particular member or cohort of members. Statements may also be provided in advance of Clause 2(1) coming into force. The remediable service statement will provide members with information about their benefits available to them in respect of their remediable service. All remediable service statements must include details of any choice available to the member under Clause 5, 6 or 9 of the Bill. That is:

- details of the benefits available in relation to the member under the legacy scheme in relation to their remediable service (if any)
- details about the alternative benefits available to the member in relation to their remediable service, were they or their representatives to elect to receive new scheme benefits under Clauses 6 (pensioner and deceased members) or 9 (active and deferred members) or to make an election for opted-out service to be reinstated under Clause 5
- details of when and how the member may elect to receive new scheme benefits

2.5 This information will enable members or their representatives to make an informed decision about whether to elect to retain legacy scheme benefits, or to receive new scheme benefits.

2.6 In respect of active members, schemes will provide a remediable service statement annually.

2.7 Schemes will provide deferred members with a remediable service statement (within 18 months of Clause 2(1) coming into force) and deferred members will be able to request to receive up to one further remediable service statement per year if they so wish.

2.8 Those who are pensioner members at the point when Clause 2(1) comes into force will receive a one-off remediable service statement to inform their immediate choice. A one-off remediable service statement will be sent to representatives of deceased members. Further detail on remediable service statements is included at paragraphs 3.90 to 3.92.

Contributions

2.9 Where active and deferred members with service in a new scheme are retrospectively treated as being members of a legacy scheme for that service, there will be situations in some schemes where members have paid incorrect member contributions. This is because of differences in contribution rates or in the definitions of the pensionable pay (and therefore the amounts of pay) on which contributions are payable.

2.10 As illustrated by Example 1 below, where members have overpaid contributions, they will receive compensation that places them in the net position that they would have been in but for the discrimination. Where members owe contributions, they will be required to pay them as illustrated by Example 2. Both examples exclude the addition of interest which will also form a part of the overall contribution repayment sum.

2.11 For those who are pensioner members or deceased when Clause 2(1) enters into force, there will be a single correction of contributions which occurs after the member, or person making the decision on behalf of the

member, has made their immediate choice as to which benefits they wish to receive.

2.12 For active and deferred members who had remediable service in a new scheme, contributions will be adjusted at the point they are returned to the legacy schemes. A further adjustment will be made when a member makes their deferred choice, if they elect to receive new scheme benefits and the contributions due to the legacy and new schemes differ, to correct the member's contributions.

2.13 The schemes for the police and firefighters are unique in having tiered member contribution rates that differ between all schemes, with higher employee contributions due under the older police and firefighters' pension schemes and lower employee contributions due under the 2006/2007 police and firefighters' pension schemes, compared to the 2015 schemes.

2.14 For the other schemes, employee contribution rates are the same under legacy and new schemes. However, there are some differences in the definitions of pay or earnings that are pensionable under some of the schemes – for example, irregular overtime and hours beyond the relevant "full (or whole) time equivalent" may be pensionable in some of the new schemes, but generally are not under the legacy schemes.

2.15 Please note these examples are for illustrative purposes only.

Example 1 – Contribution overpayment

Consider a **firefighter** who is a member of the **Firefighters' Pension Schemes** (2015 scheme and 2006 scheme).

In **2012 they were 30**, and so **did not receive transitional protection**. They therefore joined the 2015 scheme from 1 April 2015 and **paid 2015 scheme contributions**. On implementation of remedy, they will receive compensation to reflect the lower contributions that they would have paid in the 2006 scheme.

Assuming the member earned an **annual salary of £32,000** for each year in the remedy period, their contributions paid in the 2015 scheme versus those they would have had to pay in the 2006 scheme would be as follows:

| 2015 Scheme | 2006 Scheme |
|---|---|
| Applicable contribution rate (% of pensionable pay): | Applicable contribution rate (% of pensionable pay): |
| 2015/16 – 12.2% | All years – 10.9% |
| 2016/17 – 12.5% | |
| 2017/18 – 12.7% | |
| 2018/19 onwards – 12.9% | |
| Total contributions paid: £28,500 | Total contributions due: £24,400 |

As the member paid **higher contributions in the 2015 scheme than would have been due in the 2006 scheme**, they will be **due compensation**.

However, pension contributions attract **tax relief** and so the compensation payable to the member needs to be adjusted to take this into account:

Overpayment of contributions = £4,100

Total compensation payable to the member = £3,300 (assuming an applicable tax rate of 20% and excluding the interest for simplicity)

At retirement

Once remedy has been put in place, the firefighter will be a member of the 2006 scheme and will be in the same financial position had they paid 2006 scheme contributions.

This Bill allows for scheme regulations to provide for a member to be given the option of deferring the compensation payment in respect of contributions in 2023, if they prefer, until they make their choice at

retirement. However, schemes will need to decide whether to allow for this in their regulations and will consult on their preferred approach.

As the member is due £3,300 compensation, depending on the approach taken to the scheme regulations, if the member accepted the compensation in 2023 and chooses 2015 scheme benefits at retirement, the member would need to repay the compensation with interest. Or, if the approach of deferring the compensation for contributions is chosen and the member chooses 2006 scheme benefits, the compensation will be due and will be paid at that point with an allowance for interest.

For simplicity, the impact of interest and salary increases have been excluded from these numerical examples, and the amounts have been rounded to the nearest £100.

Example 2 – Contribution underpayment

Consider a **police officer** who is a member of the **Police Pension Schemes** (2015 scheme and 1987 scheme).

In **2012 they were 35 and did not receive transitional protection**. They therefore joined the 2015 scheme and **paid 2015 scheme contributions**. On implementation of remedy, they will need to pay the contributions that they would have paid in the 1987 scheme.

Assuming the member earned an **annual salary of £32,000** for each year in the remedy period, their contributions paid in the 2015 scheme versus those they would have had to pay in the 1987 scheme would be as follows:

| |
|---|
| 2015 Scheme |
| Applicable contribution rate (% of pensionable pay): 13.44% |
| Total contributions paid: £30,100 |

| |
|---|
| 1987 Scheme |
| Applicable contribution rate (% of pensionable pay): 14.25% |
| Total contributions due: £31,900 |

As the member paid **lower contributions in the 2015 scheme than would have been due in the 1987 scheme**, they will **owe additional contributions**.

However, pension contributions attract **tax relief** and so the cost to the member needs to be adjusted to take this into account.

Underpayment of contributions = £1,800

Total additional cost to the member = £1,440 (assuming member has a 20% marginal rate of income tax). The Bill allows for amounts owed by members to schemes to be paid over time. Further details are included in paragraph 3.75.

At retirement

Once remedy has been put in place, the police officer will be a member of the 1987 scheme and will be in the same financial position had they paid 1987 scheme contributions. At retirement, if they instead choose to receive 2015 scheme benefits with respect to their remediable service, then they will receive a compensation payment in respect of the additional contributions they paid with interest.

For simplicity the impact of interest and salary increases have been excluded from these numerical examples.

Tax treatment of contributions

2.16 Pension contributions attract tax relief at the member's marginal rate when they are deducted from the member's salary. Where a member moves between schemes and the contributions owed then differ, they will either be required to pay additional contributions to the scheme to make up any shortfall or will be owed compensation from the scheme in respect of overpaid contributions.

2.17 As above, there are broadly three potential scenarios where an adjustment to contributions may be required:

1. if a pensioner or person making a decision on behalf of a deceased member has made an immediate choice election that results in alternative scheme benefits being payable
2. when active and deferred members are returned to the legacy scheme in respect of service during the remedy period when Clause 2(1) comes into force
3. if active and deferred members make a deferred choice election to receive new scheme benefits in respect of remediable service at retirement, or a person makes a deferred choice election on behalf of a deceased member

2.18 If a member has paid insufficient contributions to the scheme they are moved to, they will need to pay the additional contributions and, provided they meet the necessary conditions, will receive tax relief on those contributions at the point when they are made. Where this results in less tax

relief than the individual would have received had the individual paid those contributions in the relevant remedy period years the member will be able to apply for compensation for the additional tax relief they would have received. Where an individual does not qualify for tax relief at the point the additional contributions are made, scheme regulations made under Clause 16 of the Bill will allow the liability to pay those contributions to be reduced by an amount to reflect the tax relief that would otherwise be available.

2.19 If a member has overpaid their contributions, they will be owed compensation from the scheme. However, if the member has overpaid their contributions then they will have also received too much tax relief on these payments. The scheme manager will therefore pay the individual compensation to reflect the overpaid contributions less an amount to reflect the excess tax relief they have received.

2.20 This approach will minimise the potential for unintended consequences regarding contributions in earlier years due to the operation of the usual statutory time limits for correction of tax. Without it, some members could receive refunds of contributions gross for years out of scope for tax correction, putting them in a better position than they would have been in had the discrimination not taken place. This could also risk putting them in a better position than other members receiving the same benefits.

Immediate choice election

2.21 Once remediable service statements are provided to pensioner members or in respect of deceased members (who retired or died before Clause 2(1) comes into force), as set out in Clauses 6, 7 and 8, scheme regulations must make provision for a pensioner member (or the person making a choice on behalf of a deceased member) to elect to receive new scheme benefits in respect of their remediable service, instead of the legacy scheme benefits. This is referred to as an “immediate choice”.

2.22 The member, or the person making an immediate choice on behalf of a deceased member, must make their choice within a year of a remediable service statement being provided to them. This deadline can be extended by the scheme manager if they consider it reasonable in all the circumstances.

2.23 Clause 2(1) is modified in its application to pensioner and deceased members. When Clause 2(1) comes into force it does not immediately change the entitlement of a member with remediable service in a new scheme. Such members will therefore continue to receive new scheme benefits. Instead, the retrospective change in entitlement (to legacy scheme benefits) is deferred until the period for a member to make an election under Clause 6 has expired or, if earlier, an election is made by the member. Where an election for new scheme benefits is not made (or is not deemed to have been made (see below)), Clause 2(1) then has effect for the purposes of determining the benefits that are (and at any time were) payable to the member. This means that the benefits payable to a pensioner or in respect of a deceased member will not be changed until the member or their personal

representative has the opportunity to determine which benefits, legacy or new scheme, they wish to receive.

2.24 If the member (or their representative) does not communicate their choice to the scheme by the deadline, a scheme manager may deem an election to have been made and pay new scheme benefits to the member (or their beneficiary). The default position is that members will receive legacy scheme benefits unless they make an election to receive new scheme benefits, Clause 8 allows for that default to be overridden where a member has not or cannot engage with the process and it is clear to the scheme that new scheme benefits would be more valuable to the member. An example of an immediate choice where a member has retired on ill health grounds is set out below:

Example 3 – Ill Health Retirement

Consider a senior teacher who is a member of the Teachers' Pension Scheme (NPA60 section).

In 2012 they were 54, and therefore received **transitional protection**. In **2016 at age 58 they retired on tier 2 ill health** grounds. They will retrospectively be given a choice of pension for their service over the remedy period, of either:

| Current pension | OR | Alternative pension |
|---|----|--|
| Legacy scheme (NPA 60 section): 1/80 th of final salary each year Automatic lump sum (3x pension) Ill health enhancement: 50% of prospective service up to NPA (age 60) | | New scheme: 1/57 th of revalued salary each year Optional lump sum Ill health enhancement: 50% of prospective service up to NPA (age 66 = SPA) |

In 2015 they had **20 years of past service** and a salary of **£50,000**.

In 2016, upon ill health retirement they had accrued a further year of service and received a **1-year service enhancement**. Therefore, they retired with a pension of £13,750 per year and an automatic lump sum of £41,250.

Once the remedy solution is applied, and assuming they would meet the tier 2 ill health qualifying criteria in the new scheme, they would receive a higher pension if they instead chose to have accrued new scheme benefits from the remedy period. This is primarily because they will receive a **4-year service enhancement** due to the higher NPA (and therefore a greater amount of prospective future service).

| Legacy scheme pension | OR | New scheme post 2015 |
|--|----|---|
| Past service pension: £13,125 Ill health enhancement: £625 Total pension: £13,750 Automatic lump sum: £41,250 | | Pre 2015 past service pension (legacy scheme): £12,500 Post 2015 past service pension (reformed scheme): £900 Ill health enhancement: £3,500 Total pension: £16,900 Automatic lump sum: £37,500 |

They may decide to commute a portion of their new scheme pension in order to arrive at the same lump sum of £41,250 originally received, in order to avoid having to repay some of it. If so, they would then receive a total pension of £16,600 per year, which is still higher than that under the legacy scheme design.

The member will be due back payments of the amounts previously underpaid.

For simplicity, amounts have been rounded to the nearest £25.

Deferred Choice Election

2.25 For those who are active or deferred members on or after 1 October 2023, the choice whether to receive legacy or new scheme benefits for remediable service will be made in the future, close to the point when pension benefits are paid. This is referred to as a 'deferred choice' as it is taken in the period immediately before the member's benefits are expected to be paid for the first time, when they, or the person making a choice on behalf of a deceased member, will have greater certainty about the benefits payable under each option.

2.26 Some active or deferred members may have more than one period of employment in a workforce or across different workforces. As a result, they may have kept the resulting pension entitlements separate rather than transferring them from one scheme to another or aggregating different periods of pensionable service within one scheme. Where that is the case members will be given a separate deferred choice in respect of each separate pension entitlement.

2.27 Members will be able to make their decision in the period before they expect to become entitled to a pension. The schemes contain provisions allowing members to access their pension benefits subject to satisfying eligibility criteria. For example, members may be able to apply for commencement of pension scheme benefits from minimum retirement age or might instead choose to remain in employment and access benefits later, at the point they would be entitled to an unadjusted pension or later. Alternatively, they may take partial retirement. The schemes also contain various provisions around early commencement of pension in grounds of ill-health or in the event of redundancy. When a member wishes to make their election will therefore depend on individual circumstances or plans. In practice active and deferred members must already engage with the scheme when they wish to commence payment of their pension benefits, so the decision about which benefits to take in relation to their remediable service will be made as part of that existing process.

2.28 While it is less likely that an active or deferred member who is about to retire will fail to engage with the decision-making process (as they will need to communicate with the scheme in order for their pension to be put

into payment when they retire), it is still possible that the member will not make a decision.

2.29 Schemes may therefore deem an election for new scheme benefits to have been made (in the same way as applies in relation to pensioner and deceased members (see above)) or indeed deem that no election has been made and the member remains entitled to legacy scheme benefits if no decision has been communicated to the scheme by the deadline.

Benefit corrections

2.30 Where the benefits payable to a pensioner or deceased member change as a result of a member's, or their representative's, immediate choice, any benefits already paid will need to be corrected.

2.31 This encompasses both any lump sum payments and pension benefits. Where a lump sum payment or continuing pension benefits have been overpaid as a result, the overpayment must be repaid to the scheme. Where a lump sum payment or pension benefits have been underpaid, the scheme will pay these outstanding benefits to the member, or member's representative where the member is deceased.

2.32 Different scheme designs apply between legacy and new schemes, and vary from workforce to workforce. Many of the legacy schemes provide for automatic payment of tax-free lump sum benefits, and some allow members to forego lump sum in return for additional pension or forego pension in return for a greater lump sum. The new schemes usually do not provide an automatic tax-free lump sum, but allow members to forego pension in return for one. When members choose to receive alternative benefits (i.e. members who had transitional protection and remained in the legacy scheme elect to receive new scheme benefits instead, or members who were moved to the new scheme on 1 April 2015 instead receive legacy scheme benefits) they will also need to consider whether they wish to receive a lump sum and whether that will be equal or different to any lump sum they received when their current pension benefits commenced. Where members choose to receive a lower lump sum they will be required to repay the difference to the scheme. Where members choose to receive a higher lump sum the scheme will pay the difference to the member.

2.33 Any additional pension payments (other than lump sum payments) to a member will be taxed in the year that they are paid at the member's marginal tax rate. Where the member's marginal tax rate is higher than it would have been if the additional pension payments had been made in the individual years they relate to, the member will be able to ask the scheme for a schedule showing the years in which the pension payments were due. They can then contact HMRC to have their previous marginal tax rates applied to the amounts related to those years.

Scheme design differences

2.34 As set out above, there may be differences between legacy and new schemes in terms of the contributions members are required to pay and the benefits they receive. There will also be other differences in scheme design between legacy and new schemes which the member will wish to factor into their decision, including:

- Normal pension age (NPA): NPA in the new schemes is the age at which a member may take their pension without an actuarial adjustment. Where a member chooses to receive pension benefits before this point, an adjustment is made to reflect the fact that the pension will be paid for longer. Where the member chooses to receive benefits after NPA these benefits may be increased to reflect the fact they are being paid later. The new schemes usually have an NPA that is higher than the equivalent date in the legacy schemes, for example NPA is a member's state pension age in the new NHS, Teachers' and Civil Service schemes, but the legacy arrangement for those schemes have equivalent dates of age 60 or age 65. Where a member makes an immediate or deferred choice election to receive new scheme rather than legacy scheme benefits in relation to their remediable service, they will be entitled to the benefits that they would have received from new scheme at the point the benefits commence(d). For example:
 - if the member has/had not attained new scheme NPA at the point entitlement to the payment of benefits arises, the benefits will be adjusted to reflect the fact that they are being paid earlier; or
 - the member could instead elect to receive new scheme benefits but ask for them to be deferred. The member could then request that the new scheme benefits are brought into payment at a later date
- Benefits: There are further differences between the way benefits accrue between the legacy and new schemes, which when taken together may mean that different schemes produce more beneficial outcomes for different individuals. For example, the accrual rate in the new NHS schemes is 1/54 of a member's earnings in a year (so a member earning £32,000 will accrue a pension of £593 in that year), which is then indexed by the Consumer Price Index (CPI) + 1.5% pa until the benefits are paid. Under the 2008 section of the NHS legacy scheme in England and Wales, NHS staff accrue pension at 1/60th of their final salary for each year of service. Whether the new scheme or legacy scheme produce a higher pension in relation to a member's remediable service will therefore depend on matters such as the

member's career profile, earnings growth and the age at which benefits are taken.

- Abatement: Abatement applies in many legacy schemes and means that, if a member re-enters employment covered by the same scheme after they have retired (or in limited circumstances, if they re-enter employment in another public service scheme but without a fair and open competition) their pension may be subject to an abatement test. Abatement provisions vary between legacy schemes but in some, abatement tests apply to all re-employments of scheme pensioners. They operate so that at the date of re-employment, the re-employed pensioner's income from pension plus salary on re-employment does not exceed their salary when they were previously employed, with the pension being reduced if necessary during the period of re-employment to deliver this. New schemes generally do not make provision for abatement.
- Death benefits: Following a member's death, the beneficiaries who could receive a pension or lump sum may differ between the legacy scheme and the new scheme. The amounts that eligible beneficiaries receive may also be different, as illustrated by the example below.

Example 4 – Death in Service

Consider the death benefits of a **nurse** who is a member of the **NHS Pension Scheme** (2015 Scheme and 1995 Section), who **joined in 2005** and who dies in service under Normal Pension Age.

In **2012 they were 50**, and so **received transitional protection** and remained in the 1995 Section in 2015. The adult survivor (e.g. a spouse) will be given a **choice of pension for their service over the remedy period**, of either:

| Legacy scheme (1995 section) | New scheme |
|--|--|
| <p>50% of the member's notional tier 2 ill health pension:</p> <p>Where member ill health tier 2 pension =</p> <p>1/80th of final salary each year</p> <p>Plus a service enhancement of 2/3 prospective service to the normal pension age of 60</p> | <p>33.75% of the member's notional tier 2 ill health pension:</p> <p>Where, member ill health tier 2 pension =</p> <p>1/54th of revalued salary each year</p> <p>Plus a pension enhancement of 50% of prospective pension to the normal pension age of state pension age (67 for this member)</p> |

OR

The adult survivor will also receive a short-term pension equal to the member's salary for 6 months after the member's death and a lump sum of 2 times the member's salary in either scheme.

If the member had a **salary of £40,000 when they died at age 56**, the adult survivor will receive a pension of **£2,500 p.a.** in respect of their pension accrued **before 2015** (i.e. for the 10 years' service to 2015) and will need to make a **choice for pension accrued after 2015** in the remedy period. Their choice will be between the following pension amounts at retirement:

| | |
|--|--|
| <p>Pre 2015 past service pension (legacy scheme): £2,500 p.a.</p> <p>Post 2015 past service pension (legacy scheme): £750 p.a.</p> <p>Enhancement: £667 p.a.</p> <p>Total survivor pension: £3,917 p.a.</p> <p>Plus, lump sum of £80,000</p> | <p>Pre 2015 past service pension (legacy scheme): £2,500 p.a.</p> <p>Post 2015 past service pension (reformed scheme): £750 p.a.</p> <p>Enhancement: £1,375 p.a.</p> <p>Total survivor pension: £4,625 p.a.</p> <p>Plus, lump sum of £80,000</p> |
|--|--|

OR

In this example the adult survivor would be **better off receiving new scheme benefits**. This is due to the increase in prospective service as a result of the higher NPA in the new scheme.

The adult survivor will be due back payments of the higher amounts from the new scheme benefits.

For simplicity the impact of salary increases and in-service revaluation have been excluded from this numerical example. The example also only considers an adult dependent's pension and assumes there are no children's pensions payable.

Chapter 3

Elements of remedy where detail will be in scheme regulations

PSP&JO Bill Chapter 1: Schemes other than Judicial Schemes and Local Government Schemes

Clause 5: Election for retrospective provision to apply to opted out service

Legislative Approach

3.1 Section 3 of the Pensions Act 2008 requires employers, including public service employers, to automatically enrol all jobholders who meet certain criteria in an occupational pension scheme. However, it is possible for members to opt out of contributing to a pension scheme. For the time that a member has opted out of a public service pension scheme, their pension will not accrue further, and their employer will not make contributions. There will be some public service pension scheme members who are, in principle, eligible for the remedy but have opted out for some or all of the remedy period. There are many reasons why a member may choose to opt out, however a common reason is immediate financial pressures meaning that the member does not wish to give up part of their salary for contributions. Because of the differences between schemes, including different contribution rates, it is possible that an unprotected member who opted out of a new scheme may not have chosen to do so, had remaining in the legacy scheme been an option for them at the time. It is equally possible that a protected member who opted out of a legacy scheme may not have chosen to do so had the new scheme been available to them at the time.

3.2 Members who chose to opt out for some or all of the remedy period meet all of the criteria regarding remediable service in Clause 1 apart from the second condition (that their service is pensionable under a Chapter 1 scheme), but would have met that condition had they not opted out (this definition of “opted-out service” is provided at Clause 33). Clause 5 requires the responsible authority for the scheme to provide in regulations that eligible members who opted out of either their new or legacy scheme are able to elect for their opted-out service to be reinstated if they wish, subject to satisfying any conditions provided in scheme regulations under Clause 5(5) and (6). Members who opted out because they were prevented from being a member of either the relevant legacy or new scheme as a result of transitional protection, will be able to have the period reinstated into the

legacy scheme (subject to the payment of the appropriate member contributions) and will subsequently have a choice whether to receive legacy or new scheme benefits in relation to that period.

3.3 Civil servants have the option of participating in a defined contribution “partnership” scheme, instead of the main civil service schemes. Therefore, some eligible members may have chosen to participate in the partnership pension scheme rather than opting out of a pension scheme entirely. The partnership scheme allows members to decide on the amount they contribute, if any, so is an option for members suffering immediate financial pressure, as they can reduce their contributions to a level they feel comfortable with, without having to forgo accruing a pension entirely for the period they have opted out. As set out above, it is possible that an unprotected civil servant who opted for the partnership scheme instead of the new scheme may not have chosen to do so had remaining in the legacy scheme been an option for them at the time. It is equally possible that a protected civil servant who opted for the partnership scheme instead of a legacy scheme may not have chosen to do so had the new scheme been available to them at the time.

3.4 In order to re-join a public service scheme, those who were in the partnership scheme will need to transfer those partnership scheme rights relating to their employment into the legacy scheme and surrender them. They will also need to pay the correct contributions, as with other opted out members. Once they have done this, the same provisions and processes will apply to them, as to other eligible members; for example, they will be able to elect which set of benefits - new or legacy - they wish to receive for the remedy period.

3.5 Elections for opted-out service to be reinstated as pensionable service, must be made within one year beginning with the day on which the member is first sent a remediable service statement, or such later time as the scheme manager considers reasonable in all the circumstances, as set out in Clause 5(4).

Approach to Scheme Regulations

3.6 Clause 5(5) contains a non-exhaustive list of provisions which scheme regulations made under Clause 5(1) may include. These are:

- requiring an application on or behalf of a person with opted out service, in order for them to be able to make an opting in election
- requiring particular conditions to be met for the application to be accepted
- requiring information to be provided before an election is made
- setting out the form and manner in which an election is to be made

- setting out who may make an election in relation to a deceased member's service

3.7 From a member or their representative's perspective, the scheme will make information available that sets out the requirements in the regulations and the process they need to go through to be able to opt back into their legacy scheme, including any criteria they need to meet, forms they need to complete and evidence they may need to provide, demonstrating that they meet the criteria set out by the scheme.

Clause 16: Powers to reduce or waive liabilities

Legislative Approach

3.8 Clause 16 provides a power for responsible authorities for schemes to make regulations allowing scheme managers to reduce or waive a liability to pay back overpaid pension and lump sum benefits that are owed by a person to a scheme (Clause 16(1)) as a result of corrections made under Clause 12. It also provides a power to reduce or waive the amount of contributions that a member may owe a scheme, in particular to reflect tax relief, and to reduce or waive the compensation that a scheme may owe a member to reflect overpaid contributions, again in particular to reflect tax relief.

3.9 This power is particularly important where, for example, the remedy provided by the Bill means that a pensioner member's benefits have been overpaid for a reason other than the member's own choice. The policy approach is that members are entitled to the benefits they would have received absent the discrimination and subject to the sums that they should have contributed being paid, and amounts overpaid being paid back to the scheme. However, where repaying these overpaid amounts would cause particular difficulties or hardship for the member, scheme managers will (under the power in Clause 23(1)(b)) have flexibility about how and when the additional amounts should be paid (e.g. under a payment plan) and (under the powers in Clause 16) be able to write off some or all of that amount where appropriate to do so. This is in line with the commitment in the Government's consultation response that a proportionate approach will be taken to the recoupment of overpaid benefits.¹

3.10 The main scenario in which a pensioner member's benefits have been overpaid for a reason other than the member's own choice is in relation to tapered protection. As with all in scope members, those with tapered protection will be offered a choice between legacy scheme benefits and new scheme benefits for the full remedy period. For most members, legacy scheme benefits only for the remedy period, or new scheme benefits only for the remedy period will be more valuable than the combination of benefits they were receiving or due to receive. However, for some members with tapered protection there is a possibility that legacy or new scheme benefits only for the remedy period will be less valuable than the combination of benefits they were receiving or due to receive. For pensioner members the impact of this is more immediate because their pension in payment will be reduced from the date on which their immediate choice is made. They will also need to repay any amounts overpaid up to that point. To mitigate any potential hardship or undue burden on a member that could result, this clause provides a power to make regulations allowing scheme managers to reduce or waive an amount that needs to be repaid, for example overpaid

¹ See in particular paragraph 2.41 of the Government's consultation response: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/958635/Public_Sector_Pensions_Consultation_Response.pdf

benefits or an overpaid lump sum. This clause is one of a package of measures intended to mitigate such circumstances. It is therefore expected that responsible authorities and scheme managers will consider using this power in conjunction with the power in Clause 21 to pay compensation and the power in Clause 23 which permits responsible authorities to make regulations setting out the process by which relevant amounts may be paid, such as in instalments. This would also reduce the burden on an individual member where large amounts had been overpaid and therefore need to be repaid to the scheme. The impact on active or deferred taper-protected members will be different in the sense that, while these members may receive a lower lump sum and / or pension in payment than they anticipated, they will not yet have received any lump sum or pension in payment and therefore no overpayments will have occurred. This power (Clause 16(1)) therefore does not apply to them.

3.11 In exercising an ability to reduce or waive liabilities under regulations made using the powers in Clause 16 the Government we would expect scheme managers to look at each individual's circumstances on a case-by-case basis, subject to any provision in Treasury Directions under Clause 24(3).

3.12 Under Clause 16, regulations will also allow scheme managers to reduce or waive liabilities owed by a member to the scheme by an equivalent amount to tax relief. This deals with situations where, for example, a member would have been entitled to tax relief if the payments had been made in the relevant remedy period year, but at the point the individual actually makes the payment to the scheme they are not eligible for tax relief. An example of when this might occur is when an individual is no longer an active member and so not entitled to tax relief on their contributions. Regulations made under the power in Clause 16 will allow the scheme to reduce the amounts owed to reflect the tax relief that the member would otherwise have received.

3.13 Clauses 16(5) to 16(7) allow for regulations to permit scheme managers to reduce or waive liabilities owed to a member by the scheme to compensate for overpaid pension contributions by an amount equivalent to tax relief. As set out in the tax relief on contributions section of this document, members who have overpaid their contributions will be owed compensation from the scheme. However, if they have overpaid their contributions, they will also have received excessive tax relief on those contributions. This power allows scheme managers to reduce the amount of compensation owed from the scheme to the member to reflect the excess tax relief the member has received, putting them in the correct net position.

Approach to Scheme Regulations

3.14 Regulations made under Clause 16 must be made in line with Treasury Directions, as set out in Clause 24(2)(a). This will ensure consistency in terms of the content of regulations made under Clause 16 and how they are applied.

3.15 Content of regulations made under Clause 16 may also include the following:

- the process by which a scheme manager will decide whether reducing or waiving liabilities is appropriate in the circumstances. This could include whether a particular person or group of people involved in the scheme's administration are required to be involved, whether the process will be automatic or on receipt of a request from a member, the timeframe for any decisions and the process for an appeal, in the event that the member disagrees with the outcome of the scheme manager's decision
- the factors to be taken into account by the scheme manager when deciding whether it would be appropriate for an amount owed to be waived or reduced. These could include for example the amount that would need to be repaid, the length of time for which a member had been receiving overpaid pension benefits and any other sources of income to which the member has access
- clarification of how regulations made under Clause 16 interact with provisions already contained in scheme regulations, including where regulations made under Clause 16 should be used instead of those existing provisions.

Clause 17: Pension credit members

Legislative Approach

3.16 Clause 17 makes provision for responsible authorities to make regulations so that the remedy can be applied to a member who has divorced or dissolved a civil partnership, where a pension is shared with their former spouse or civil partner. It does not amend or interfere with existing law in relation to divorce, nor the way Courts decide how to split assets upon a divorce or dissolution. For reasons explained below, the Bill does not make specific provision in relation to pension offsetting or pension attachment orders.

3.17 The three main ways of dealing with pensions in the context of a divorce or civil partnership dissolution are offsetting, pension attachment orders and pension sharing orders. Pension offsetting and pension attachment orders are approaches which inherently involve more uncertainty than pension sharing orders, meaning it is more difficult to justify any interferences with an ex-spouse's or former civil partner's benefits following a member's election as to which set of benefits they wish to receive. In view of this uncertainty the Bill does not make any policy intervention to achieve a different result where there is an attachment order, or where the value of a pension has been fully offset against other assets.² This will be the case even if this means that the amount of the payments themselves is lower than that anticipated by the member. However, to ensure pension sharing orders operate correctly as a result of the remedy, bespoke provision is included at Clause 17 of the Bill.

3.18 Pension sharing orders are generally expressed as a percentage of a Cash Equivalent Transfer Value (CETV) and cover pension accrued up to the point of divorce or dissolution. The proportion of the CETV awarded to the ex-spouse or former civil partner is then converted into a pension debit and a pension credit. The original member has a deduction applied to their pension, known as the pension debit, and then becomes known as the "pension debit member". Public service schemes create a defined benefit pension in the scheme for the ex-spouse or former civil partner who becomes a "pension credit member". Pension credit members are treated similarly to a deferred member and are responsible for any taxes due on their share of the pension, including lifetime allowance.

3.19 Where the debit member is a member of multiple pension schemes, the annex to the pension sharing order stipulates which scheme(s) will have their benefits shared, and by what proportion. Separate CETVs are generally calculated for each scheme of which the debit member is a member. A standard form (Form P1) is used as the annex to the pension sharing order, which sets out the percentage of the CETV to be allocated to the credit member, which scheme the credit is to be taken from and whether it is to be

² It would be possible for, say, 70% of the value of a pension to be offset against other assets and for the remainder to be shared on terms as set out in the pension sharing order.

transferred internally or externally (noting that the latter is not available to ex-spouses or former civil partners of public service pension scheme members).

3.20 Pension sharing orders cover pension accrued up to the point of divorce, meaning that for the purposes of the retrospective remedy, only pension sharing orders for divorces that took place on or after 1 April 2015, i.e. the start of the remedy period, will be affected.

3.21 Where a divorce has not yet taken place, two or more sets of CETVs will need to be calculated: one based on legacy scheme benefits for the remedy period and one based on new scheme benefits. The CETV provided to the court for divorce proceedings will be the higher of the two. Where a divorce took place after 2015, with respect to remediable service, the CETV would have taken account of the scheme the member was in at the time and it therefore may not have been correct.

3.22 On implementation of the remedy any service in new schemes which unprotected members and those who had tapered protection accrued during the remedy period will be treated as having been pensionable service in the legacy scheme. However, pension credit members do not have remediable service. Instead, the intention is for scheme managers to calculate the CETV based on the benefits of the alternative scheme and if this is higher than the CETV originally calculated, the additional amount should be converted to a further pension credit.

3.23 The debit deducted from the pension debit member's pension will reflect the member's choice of benefits for the remedy period. This will not affect the pension credit member's position. An example of how the remedy may affect a divorced member, and by extension their ex-spouse or civil partner is set out below.

Example 5 – Divorce (pension sharing order)

Consider a member who got divorced during the remedy period. **They did not receive transitional protection** and so were treated as a member of the new scheme at the time of the divorce. The courts put in place a pension sharing order which was based on the total CETV quoted at the time (which included legacy scheme benefits accrued before April 2015 and new scheme benefits accrued thereafter).

At the time of the divorce

Legacy scheme CETV quoted: £150,000

New scheme CETV quoted: £50,000

Total CETV quoted: £200,000

Pension sharing percentage awarded by the Court: 40% in both schemes

Therefore, ex-spouse receives a pension credit of value £60,000 in the legacy scheme and £20,000 in the new scheme

Pension credit granted to ex-spouse: £3,600 p.a. in legacy scheme and £2,000 p.a. in new scheme

Pension debit for member (to be deducted off their pension): 40% of their legacy scheme pension and 40% of their new scheme pension accrued up to the point of divorce. For simplicity let's assume there are also £3,600 p.a. in legacy scheme and £2,000 p.a. in new scheme

Note: in practice the debits and credits are unlikely to be the same, as a) the pension credit will have no attaching dependant benefits, and b) the pension credit will depend on the relevant ages of the member/ ex-spouse or former civil partner.

The calculation of the CETV was prior to the implementation of the remedy and so may have been understated. If, on revisiting the CETV, the value considering accrual in the legacy scheme during the remedy period for the member's deferred choice, is higher, the ex-spouse's pension credit will be increased by the same percentage increase in the CETV.

Revisiting once remedy has been implemented

CETV for remedy period had member been in legacy scheme: £55,000

This is 10% higher than the £50,000 new scheme CETV quoted at the time of the divorce, and therefore the ex-spouse's new scheme pension credit gets increased by 10%.

Revised pension credit granted to ex-spouse: £3,600 p.a. in legacy scheme and £2,200 p.a. in new scheme (assuming new scheme pension credit remains where it is).

The member's pension debit in relation to the remedy period will depend on the form of benefits they choose at retirement:

Member chooses legacy scheme benefits
Pension debit: £1,300 p.a.
(revalued to retirement date)

OR

Member chooses reformed scheme benefits
Pension debit: £2,000 p.a.
as per the initial debit
(revalued to retirement date)

The pension debit if the member chooses legacy scheme benefits will be 40% of the legacy scheme pension accrued in the remedy period up to the point of divorce. Even if it corresponds to a higher value, the legacy scheme benefits debit may be lower compared to that for the new scheme benefits. This is due to the earlier NPA in the legacy schemes which will mean the debit applies for a longer period of time. Please note all pension credits and debits used in this example are illustrative only.

Approach to Scheme Regulations

3.24 Regulations made under Clause 17 must be made in line with Treasury Directions, as set out in Clause 24(2)(b). This will ensure consistency in terms of the content of regulations made under Clause 17 and how they are applied.

3.25 Content of regulations made under Clause 17 may include the following:

- provision setting out the factors that scheme managers should take into account when recalculating CETVs based on alternative scheme membership for members with remediable service, for example using factors which applied at the point when the original CETVs are calculated
- how any increase in CETV should be converted to a top-up of the pension credit
- provisions for information to be provided to pension credit members informing them of the potential increase to their pension credit, where applicable

Clause 18: Voluntary contributions

Legislative Approach

3.26 In many of the public service pension schemes, it is possible for members to make additional voluntary contributions, over and above their normal monthly contributions, to purchase additional benefits. These could take the form of, for example, added pension or earlier payment of benefits with no or reduced reductions for early payment.

3.27 Some members will have purchased additional benefits in the new scheme, but will, by virtue of Clause 2(1), be treated as though they were always members of the appropriate legacy scheme for all other purposes. Clause 18(5) provides that scheme regulations may extinguish new scheme benefits arising from voluntary contributions made during remediable service. The policy approach is that where members become legacy scheme members in relation to their remediable service, they will instead be given rights in that scheme that are either of equivalent value to those foregone in the new scheme or are alternative rights that could have been purchased had the voluntary contributions instead been made to the legacy scheme, Clause 18(6) provides that schemes may alternatively compensate members for the additional contributions made during the remedy period to the new scheme, less an amount equivalent to the tax relief received.

3.28 Where a member with additional benefits in a legacy scheme, whether those arose from additional voluntary contributions to the legacy scheme during the remedy period or are equivalent or alternative benefits awarded under Clause 18(6), elects to receive new scheme benefits, Clause 18(3) & (4) provide that the benefits may be varied. The policy is that the member will receive new scheme additional benefits in relation to their additional contributions made during the remediable period. Where a member was previously an unprotected member of the new scheme, they will receive additional benefits equivalent to those they would have received had their new scheme benefits not been extinguished. Where a member was previously a protected member of the legacy scheme, they will receive additional new scheme benefits that are of equivalent value to the rights they would have obtained had the additional contributions been made to the new scheme during their remediable service.

Approach to Scheme Regulations

3.29 Regulations made under Clause 18 must be made in line with Treasury Directions, as set out in Clause 24(2)(c). This will ensure consistency in terms of the content of regulations made under Clause 18 and how they are applied.

3.30 Content of regulations made under Clause 18 may include the following:

- provision setting that additional benefits will be varied where a member elects to receive new scheme benefits under Clause 6 or 9
- provision extinguishing any additional benefits in relation to additional contributions made to a new scheme during a period of remediable service
- provision under which a member receives rights to legacy scheme benefits that are of equivalent value to any new scheme right that are extinguished, alternative benefits that would have been secured had the additional contribution been made to the legacy scheme, or compensation for the additional contribution(s) made to the new scheme during remediable service

Clause 19: Transfers

Legislative Approach

Non-club transfers

3.31 When a member of a pension scheme changes employment, and their new employer's scheme is not covered by the Public Sector Transfer Club, they are able to transfer their pension into their new employer's scheme (if the employer allows transfers to be made). These transfers are usually carried out on the basis of a Cash-Equivalent Transfer Value (CETV) which is an actuarial calculation of the value of the pension up to the point of transfer.

3.32 Clause 19 provides that scheme regulations may make provisions about transfers in and out of the scheme. Where a member leaves a pension scheme, they may be eligible to transfer their pension rights to another pension scheme.

3.33 Where a CETV is paid out of a public service scheme and it relates to a period of remediable service, the value will be determined on a "higher of" basis, accounting for the fact that the member would have been able to choose between two sets of benefits for the remedy period.

Club transfers

3.34 The public service pension schemes and some public body pension schemes participate in an arrangement known as the Public Sector Transfer Club (the Club). The Club facilitates the portability of pension rights in the public sector. It provides that a transfer between the participating schemes is carried out on the basis that the member will receive benefits of an equivalent value in the receiving scheme to those that would have been provided if the member had remained in their previous scheme. This is a more generous basis than non-Club transfers as the policy intent is to aid the transfer of skills and people across the public sector. All of the main public service pension schemes are members of the Club.

3.35 Each of the public service pension schemes, new and legacy, allows for the transfer in of benefits on Club terms (usually within 12 months of the member joining the receiving scheme, or such longer period as the scheme may allow). Where a transfer is made, a credit (new schemes) or period of service (most legacy schemes or sections of legacy schemes) is awarded in the receiving scheme. Within the Club, a new scheme credit continues the rate of in-service revaluation that was provided in the member's previous scheme, and a final salary service credit will maintain a member's final salary link for the pension accrued in the previous scheme.

3.36 The rules of Club transfers are set out in the Public Sector Transfer Club memorandum,³ prepared by the Cabinet Office.

3.37 When the retrospective remedy is implemented, it is possible that a member's transfer may be impacted in the following way:

³ [Public Sector Transfer Club memorandum](#)

- instead of transferring out of a new scheme, they should have transferred out of a legacy scheme
- instead of transferring into a new scheme, they should have transferred into a legacy scheme, or vice versa

3.38 Clause 19(1)(a) therefore provides for scheme regulations to make provision about the transfer out of remediable service.

3.39 Clause 19(1)(b) to (1)(d) therefore provides for scheme regulations to make provision about transfers into the scheme in respect of rights in relation to remediable service in another public service pension scheme, including where the member transfers into a Chapter 1 scheme from another Chapter 1 scheme, a judicial pension scheme, or a local government scheme.

3.40 The policy approach is to provide that where members move between public service pension schemes they will retain a choice in relation to any period of remediable service. The member will be able to choose whether to receive legacy benefits (based on the legacy benefits transferred from the exporting scheme) or new scheme benefits (based on the new scheme benefits from the exporting scheme). This will ensure that the benefits of the deferred election approach are maintained where a member moves between public service schemes, rather than requiring them to make their decision at the point they transfer their benefits.

Approach to Scheme Regulations

3.41 Regulations made under the powers in Clause 19(1) are likely to include provision, as set out in:

- Clause 19(2), i.e. that rights to benefits which would otherwise have been secured by the transfer are varied as a result of an election made by virtue of sections 6 or 9
- Clause 19(3) which sets out that the rights may be varied so that they are of an equivalent value to the rights that would have been secured had the transfer in been to another Chapter 1 scheme
- Clause 19(4), which sets out that provision may be made such that the rights to benefits that would otherwise have been secured by the transfer are extinguished
- Clause 19(5), which sets out that where rights are extinguished as under clause 19(4), they must be replaced either with rights of an equivalent value or rights the member would have secured had the transfer always been into that scheme

3.42 Provision in scheme regulations governing the charging for provision of statements of transfer values and other information may also need to be amended or supplemented as a result of changes in Clause 19.

3.43 In addition to scheme regulations, it is likely that the Public Sector Transfer Club memorandum will need to be amended to account for the retrospective remedy. As the memorandum is not a legislative document, there is no Parliamentary process attached to this.

Clause 20: Further powers to make provision about special cases

Legislative Approach

3.44 Clause 20 is a miscellaneous provision which gives responsible authorities a general power to make provision about matters not dealt with through specific provision elsewhere in the Bill.

Approach to Scheme Regulations

3.45 Examples of purposes for which this power may be used are set out in Clause 20(2) and include:

- provision about members who have mixed service, i.e. tapered protection. Members with mixed service must choose either legacy or new scheme benefits for the entire remedy period. Many members will find that either legacy or new scheme benefits will be more valuable to them than the mixed service they previously had. For the small number of members who might be worse off as a result of having to choose one set of benefits for the whole remedy period, Clause 20(2)(a) allows responsible authorities to make further provision to address this in relation to the member's benefits that are payable. This power may be exercised, for example, in conjunction with the powers in Clause 16 (power to reduce or waive liabilities) and Clause 23(2)(a) (allowing relevant amounts and interest on them to be paid in instalments), as well as Clause 21 (power to pay compensation)
- provision about members whose schemes offered the option of "buying out" the actuarial reduction that would have been applied if the member retires before normal pension age. This is to allow equivalent arrangements to be provided where a member elects to receive legacy benefits in relation to their remediable service (Clause 20(2)(b))
- provision about members who are partially retired. The Bill currently provides that all such members will be pensioner members and able to make an immediate choice about their benefits under Clause 6. However, further provision is allowed here to reflect the fact that there are different arrangements in different workforces about eligibility for partial retirement and benefit entitlements of partially retired members. Responsible authorities may therefore need to make further provision in relation to the scheme specific matters
- provision about the benefits payable to or in respect of a member for whom an amount of tax, in respect of the annual allowance tax charge (AATC), has been paid by the scheme through Scheme Pays. A requirement of Scheme Pays is that when a scheme settles a member's tax charge, there is a corresponding reduction in the member's pension entitlement. The intention is for this power to be

used to ensure that this corresponding reduction in the member's pension entitlement accompanying any taxes that have been settled using scheme pays, is accounted for when members' pension entitlements change under the remedy. This power will work in conjunction with Clause 22 so that where a member has previously paid the AATC via Scheme Pays and as a result of the remedy either less or no tax is required, the scheme is able to provide indirect compensation through an uplift of the benefits equal to the amount of overpaid tax.

3.46 To ensure that this power is applied consistently, Clause 24(1) in combination with Clause 24(2)(e), requires it to be exercised in accordance with Treasury Directions. While these issues are likely to apply to most schemes, the intention is also that this provision will be used to deal with scheme-specific issues that arise as a result of the remedy. This could include, for example, ill-health retirement.

Clause 21 & 22: Power to pay compensation

Legislative Approach

3.47 These clauses describe the compensation process for scheme members who have been impacted by the McCloud remedy or by the powers granted in the Public Service Pension and Judicial Offices Bill.

3.48 Some situations where compensation may be required concern unintended results due to the interaction of the McCloud retrospective remedy and the normal operation of the tax system. In certain circumstances this interaction would mean some individuals will be financially disadvantaged; in particular, as a result of the operation of statutory time limits for correction of tax. As a result, individuals will need to be compensated for these disadvantageous tax outcomes to ensure that they are, as far as possible, put back in the position they would have been in absent the discrimination.

3.49 In addition, HMT intends that compensation will be provided to individuals who, due to moving schemes as part of the remedy and/or the operation of the deferred choice underpin, have paid excess contributions.

3.50 There may also be other types of compensation that need to be paid, where it is not otherwise practicably possible to put a member into the position they would have been in absent the discrimination. For example, this clause could also apply in relation to cases where members incur reasonable costs as a result of their agent needing to resubmit tax returns. Compensation may also be paid in relation to financial or other losses claimed by individuals or ordered by a court or tribunal.

3.51 Clause 22 allows regulations to be made so that, in certain situations where a member is due compensation relating to tax charges originally paid using 'Scheme Pays', scheme managers will be able to give members entitlements to additional benefits at retirement. Specifically, there may be instances where a member has paid a tax charge using Scheme Pays so that the amount of benefits they would have received at retirement is reduced, but that tax charge now requires adjustment down as a result of choices made by the member under the McCloud remedy. Regulations made under Clause 22 will enable scheme managers to reinstate those benefits.

3.52 Compensation will only be available where the three conditions contained in Clause 21 are met, and where the loss is of a description specified in Treasury directions.

Approach to Paying Compensation

Annual Allowance

3.53 The annual allowance (AA) is the maximum amount a member can accrue in pension benefits in a single tax year with the benefit of tax relief. The pension scheme is required to provide a pension savings statement if the

accrual is more than the standard AA. For any accrual in excess of this allowance, individuals pay an annual allowance tax charge (AATC) at their marginal income tax rate through the self-assessment process. Alternatively, a member can ask their scheme administrator to pay the charge on the member's behalf in exchange for a reduction in the member's ultimate pension benefits (known as Scheme Pays). This is reported and paid by the scheme administrator on the Accounting For Tax return.

3.54 Generally speaking, the statutory requirements for correction of tax allow a member to make an adjustment to their tax position for the current year and the previous four tax years ('in scope years'). Where a member's AATC liability has reduced as a result of the remedy, and the member has not used Scheme Pays, they can contact HMRC to report the change and claim a repayment of overpaid tax for in scope years.

3.55 For years beyond the usual statutory time limits ('out of scope years'), where an individual originally paid their AATC in cash but is out of time to have the overpaid tax corrected through a repayment of tax from HMRC, scheme managers will provide tax-free compensation equivalent to the amount of AATC they overpaid.

3.56 If the individual originally used the Scheme Pays mechanism to meet the tax charge, then for in scope years the associated reduction in the member's pension benefits will be amended as appropriate, and schemes will receive the refund from HMRC of the charge they paid. As set out above, Clause 22 will allow for an adjustment through Scheme Pays in out of scope years also.

3.57 AATC adjustments may be required at the point certain members are returned to their legacy schemes in 2023, and/or at the point when members retire, if they choose to receive new scheme benefits.

3.58 When unprotected and taper members are returned to their legacy scheme in 2023⁴, they receive legacy benefits for remedy period years at that point with retrospective effect. This could alter their accrual rate for past remedy period years, if their legacy accrual rate is different to their new scheme accrual rate. It may result in a higher or lower AATC for each individual tax year during the remedy period. For the majority of members affected, this will result in lower AATCs overall and refunds of tax and compensation being due.

3.59 When calculating their AA position and the amount of AATC they need to pay, individuals are allowed to carry forward unused annual allowance from the previous three years. Unprotected and taper protected members' AA carry forward positions could alter when they return to their legacy schemes in 2023, as a result of receiving legacy accrual for past remedy period years.

⁴ This could include active or deferred members, or pensioner or deceased members where no election is made to receive new scheme benefits.

3.60 The original consultation set out that individuals' carry forward positions for out of scope years would be unchanged. However, this was incorrect. The correct position is that individuals' carry forward positions for years out of scope for collection of tax owed will need to be revisited. This is because the carry forward rules govern the calculation of the tax charge owed, not its collection, and are therefore not subject to the usual statutory time limits upon tax collection.

3.61 Consequently, individuals will not need to claim compensation for higher AA charges resulting from their carry forward position in out of scope years being unchanged, as the consultation set out. These higher AA charges will not arise, as the AA position for legacy benefits will take full account of the revised carry forward position. However, it will mean that in the minority of cases where legacy accrual in past remedy period years triggers higher AATC liabilities, individuals could have less carry forward of unused AA available to them in their first in scope tax year, than was envisaged in the original consultation.

3.62 At retirement, if a member opts for new scheme benefits⁵, as set out in the Bill any increase in their pension entitlement will accrue at a single point shortly before they retire. This will not affect the member's accrual for previous remedy period years.

3.63 As such an increase in accrual would all occur in a single tax year, it could trigger an AA liability greater than the total AA liability that individual might have faced had their pension benefits for the remedy period always been the new scheme benefits. As set out in the consultation and the published response, the Government's intention is that the member will not bear the cost of this additional AATC triggered by choosing new scheme rather than legacy scheme benefits. The Government will take the necessary steps to address this, including potentially through further legislation in the Finance Bill to complement the compensation provisions in the PSP&JO Bill.

Lifetime Allowance

3.64 Members who have retired in the remedy period, and who choose to receive different benefits under the McCloud retrospective remedy, may see changes in the extent to which they exceed their lifetime allowance (LTA).

3.65 The LTA is the maximum amount of tax privileged benefits that an individual can accrue in tax registered pension schemes over their lifetime. Where an individual's pension benefits are in excess of the LTA, the individual and the scheme are joint and severally liable for an LTA charge.

3.66 If a member retires and, under the McCloud remedy, opts for different benefits, new or additional LTA charges may be payable. If the member has their pension situation corrected within the normal statutory time limits, then the normal processes will apply. This means that if additional LTA charges are payable, usually they will be paid by the scheme to HMRC. If a refund of overpaid LTA charges are due, they will be paid by HMRC back to the scheme administrator, who will then adjust the member's pension benefits. Where an

⁵ This could include active or deferred members, or pensioner or deceased members.

LTA charge has been overpaid and this cannot be corrected within the statutory time limits, members will receive an equivalent to the LTA charge they have overpaid.

Underpaid Contributions

3.67 As set out in paragraphs 2.17 to 2.21 above, in some cases adjustments may be required to pension contributions as a result of choices made under the McCloud retrospective remedy.

3.68 If a member is required to pay additional contributions as a result of the McCloud retrospective remedy, they may be eligible to receive tax relief on those contributions at the point when they are made. Where this results in less tax relief than the individual would have received had the individual paid those contributions in the relevant remedy period years, the member will be able to apply for compensation for the additional tax relief they would have received.

Compensation relating to court or tribunal proceedings

3.69 Compensation may be payable in relation to financial or other losses claimed in or ordered by a tribunal or court. In the first instance, all such claims are being dealt with through the normal litigation process. However there may be circumstances, for example where there is a large number of claimants in a particular scheme, where it may be more efficient and cost effective to deal with such issues through a broader compensation facility. Clause 84 would permit these arrangements and subsequent terms of any such facility would be determined in Treasury regulations.

Clause 23: Interest and process

Legislative Approach

3.70 Where sums are owed to schemes or members, for example relating to contributions or benefits, this power allows regulations to be made which will set out the process for such sums to be paid. As the remedy period spans seven years, interest will be added to amounts payable by schemes or members, as in the latter case their comparators in the scheme will have been paying the correct level of contributions throughout, so would not have had the benefit of the additional money over time.

3.71 Where eligible members have overpaid contributions or have received lower benefits if they choose to have benefits different to those already paid, they should receive interest on the overpaid contributions or pension underpayments from the time the debt arose until the correction to their contributions or benefits is applied. The same approach will apply to underpaid contributions or where they have received higher paid pension.

3.72 The payment of interest may arise due to:

- differences in member contributions and tax relief payable (including missed member contributions), and voluntary member contributions
- differences in lump sum paid to members who commenced benefits (i.e. there was a Benefit Crystallisation Event (BCE)) prior to the deferred choice of benefits at retirement
- differences in pension paid to member who commenced benefits prior to the remedy being implemented
- difference in exit scheme entitlements, e.g. resulting from tapering of award due to being close to NPA
- difference in entitlement under Efficiency schemes and Injury Benefit schemes (where members leave due to medical issues affecting their performance)
- contingent decisions, e.g. where a member opted-out and needs to make retrospective contributions
- CETVs being higher under the alternative pension option

3.73 Amounts of interest can only be finalised once all other issues (e.g. compensation and netting off) affecting member pension have been calculated.

3.74 This clause also allows responsible authorities for schemes to make provision about when relevant amounts and any applicable interest must be paid, including allowing them to be paid in instalments, requiring an application to be made to the scheme before an amount is paid, for netting off relevant amounts and interest on them owed to a person by the scheme against relevant amounts and interest owned by the person to the scheme, and finally conferring rights of appeal against decisions made under the regulations.

Approach to Scheme Regulations

3.75 This power will allow interest to be calculated and paid.

3.76 The consultation response detailed that rates of interest will be set centrally (and so will apply regardless of any interest rates which may be present in existing scheme rules) and apply across all schemes. The Government Actuary will be consulted about the appropriate rate(s) of interest to charge before the remedy is implemented. Reviews of interest rates will be held at least every 5 years, and more frequently in exceptional circumstances.

3.77 To calculate the amount of interest payable, the scheme manager will calculate the amount the scheme owes to the member and separately the amount the member owes to the scheme and add interest after netting off the two amounts. This will simplify the calculation as in some cases amounts due or owed may occur at different times or be payable in different ways (i.e. overpaid contributions will be paid by compensation whereas underpaid contributions will be paid directly to schemes). The interest payments received by members will be deemed as part of their taxable income.

Clause 24: Treasury Directions

Legislative Approach

3.78 Responsible authorities for Chapter 1 schemes are set out in Clause 34(3). These are generally the Secretary of State with responsibility for a particular workforce or service, or the relevant devolved administration. It is responsible authorities who will make scheme regulations using the powers in this Bill. However, as the Treasury – and in Northern Ireland the Department of Finance – is responsible for the overarching policy on public service pensions, there are some instances where the Treasury – or Department of Finance – will issue directions to the responsible authorities setting out how the powers to make regulations should be used. This is necessary as the Treasury and Department of Finance do not have direct control over the responsible authorities, but it is nonetheless important that the powers are exercised in a way that ensures consistency and fairness across schemes. As these directions apply to a limited number of responsible authorities, as opposed to members or the wider public, they will not be made by statutory instrument; instead, as tertiary legislation, they will be published on the gov.uk website and circulated to the relevant responsible authorities as necessary, in line with previous directions.

3.79 Although not statutory instruments, directions made under Clause 24 are nonetheless legally binding on the responsible authorities concerned, meaning that they must exercise their powers to make regulations in line with any requirements set in such directions. Clause 24(4) provides that Treasury must consult the Government Actuary before making, amending, or revoking directions about the calculation and payments of interest.

Approach to Scheme Regulations

3.80 Any regulations made using the powers listed in Clause 24(2) must be exercised in accordance with Treasury Directions, therefore Treasury Directions are likely to deal with the following matters:

- power in section 16 to reduce or waive liabilities. Directions made here may set out, for example, particular circumstances in which a scheme should or should not consider reducing or waiving liabilities or by how much the scheme should reduce or waive the liabilities
- power in section 17 in relation to pension credit members
- power in section 18 in relation to voluntary contributions
- power in section 19 in relation to transfers
- power in section 20 to make provision about special cases
- power of a scheme manager in section 21(1) to pay compensation
- power in section 21(2) to require employer to reimburse compensation paid by scheme manager

- power in section 22 in relation to indirect compensation
- power in section 23 in relation to interest and process. Directions here may include the types of payment to which interest should be applied, and the rate of interest to be applied

3.81 While Clause 24(2) sets out the powers which must be exercised in accordance with Treasury Directions, there are also other areas where Treasury Directions may set out additional requirements which scheme regulations must adhere to, for example in Clause 26(6), Treasury Directions may specify that additional information should be included in a remediable service statement, that the information must be included in a specified form, that it must be provided to a particular person or that it should be accompanied by an annual benefit statement.

Clause 25: Scheme rules that prohibit unauthorised payments

Legislative Approach

3.82 This Clause is designed to override any scheme rules that prevent an unauthorised payment being made where such a payment is permitted or required by this Bill.

3.83 Statutory constraints currently exist which prevent some schemes from making unauthorised payments. This could impact those schemes' capacity to make payments required to remedy the discrimination. For example, 2008 Section of the 1995/2008 NHS Pension Scheme and 2015 NHS Pension Scheme regulations are constrained by statutory rules preventing the scheme from making any unauthorised payments, and there are no exceptions to these regulations.

3.84 Clause 25 will allow schemes to make such payments, where they need to be made as a direct result of the McCloud retrospective remedy, even if their scheme rules prevent them from doing so. Treasury Directions will describe payments which may be made notwithstanding the prohibition in the scheme rules.

3.85 Payments made by pension schemes that are unauthorised are usually subject to unauthorised payment charges (UPCs). One example of an unauthorised payment which would be subject to the unauthorised payment tax charges regime is where a pension commencement lump sum is made more than 12 months after the initial pension with which it is connected was put into payment. This would be classed as an unauthorised payment and subject to associated tax charges. Clause 25 will allow the scheme to make the unauthorised payment but does not alone remove the UPCs.

3.86 It is the Government's intention that members should not bear the cost of UPCs on payments made as a direct result of the McCloud retrospective remedy. The Government will take the necessary steps to address this, including potentially through further legislation in the Finance Bill to complement the compensation provisions in this Bill. These specific UPCs should either not apply or should be compensated for so the individual does not suffer financial detriment.

Clause 26: Remediable service statements

Legislative Approach

3.87 Clause 26 provides that legacy scheme regulations must make provision requiring the scheme manager to provide information to members with remediable service about their legacy scheme benefits and the benefits that would be available under the scheme in respect of the member's remediable service if an election under Clauses 5, 6 or 9 were made. This information will enable members to make an informed decision about whether to elect to retain legacy scheme benefits, receive new scheme benefits, or opt-in to receive benefits in respect of their remediable service. For active members, a remediable service statement must be provided annually. This could be done alongside their annual benefit statement. For deferred members, a one-off statement will be provided, though a maximum of one further statement per year can be requested. In respect of pensioner and deceased members, a one-off statement must be provided.

Approach to Scheme Regulations

3.88 Scheme regulations are likely to set out the type of information the scheme must include in a remediable service statement. This could include:

- any lump sums payable and details of commutation options - for both legacy and new schemes in relation to remediable service
- pension entitlement - for both legacy and new scheme in relation to remediable service, including details of death benefits, spouse/partner benefits and dependants
- details of any interest payment that would be made on any overdue amounts (pensioner and deceased members)
- details of any member pension contributions that were either overpaid or underpaid, including any interest charges
- details of any pension debit/credit relating to the member
- details of any additional pension in relation to additional contributions made during remediable service and any variation to those benefits where an election is made under Clause 6 or 9
- details of the default action if an election is not made by the end of the election period
- details of repayment procedures
- how any overpayments or underpayments will be calculated
- how members may challenge the information provided or receive help from the scheme

3.89 The importance of receiving this information is illustrated by the example below, where the member's decision could have a significant impact on amounts owed to them, or amounts owed to the scheme as a result.

Example 6 – Pensioner

Consider a member of the **NHS scheme** (1995 section).

In **2012 they were 59**, and therefore received **transitional protection**. They will either be given a choice of pension for their service over the remedy period, of either:

| Current pension | OR | Alternative pension |
|---|----|--|
| Legacy scheme (1995 section): 1/80 th of final salary each year Automatic lump sum (3x) Payable unreduced from age 60 | | New scheme: 1/54 th of revalued salary each year Optional lump sum Payable unreduced from state pension age (age 65) |

In 2015 they had **15 years of past service and a salary of £40,000**.

In 2018, at age 65 they retired with a pension of £9,000 per year and an automatic lump sum of £27,000.

Once the remedy solution is applied, they could receive a higher pension if they instead choose new scheme benefits from the remedy period. The actual reformed scheme pension at retirement would depend on their commutation decision. Three scenarios are set out below:

1. no commutation
2. commuting sufficient pension so that the amount of lump sum remains unchanged from what was received in 2018, and
3. commuting pension to get the maximum amount of tax-free lump sum allowed with respect to their new scheme pension

The member's new scheme benefits are added to their benefits accrued prior to 2015 which amount to a pension of £7,500 and an automatic lump sum of £22,500. Where there is a difference in the benefits now due to the member and those paid from 2018, back payments will be due – either from the scheme to the member or from the member to the scheme depending on their commutation choice. This example assumes 5 years of back payments.

| No commutation | Lump sum equal to that in 2018 | Max lump sum from reformed scheme |
|---|---|---|
| Post 2015 pension: £2,200 p.a. Commutation lump sum: £0 Total pension: £9,700 p.a. Total lump sum: £22,500 Pension back payments owed to member: £3,500 Lump sum back payment owed to scheme: £4,500 Member owes the scheme in net back payments: £1,000 | Post 2015 pension: £1,800 p.a. Commutation lump sum: £4,500 Total pension: £9,300 p.a. Total lump sum: £27,000 Pension back payments owed to member: £1,500 Scheme owes the member in net back payments: £1,500 | Post 2015 pension: £1,400 p.a. Commutation lump sum: £9,500 Total pension: £8,900 p.a. Total lump sum: £32,000 Pension back payments owed to scheme: £500 Lump sum back payment owed to member: £5,000 Scheme owes the member in net back payments: £4,500 |

In practice the member can choose to commute any amount of pension between 0 and the maximum.

For simplicity, salary increased, inflation, interest and tax have been ignored and amounts have been rounded to the nearest £100.

Clause 27: Section 61 of the Equality Act 2010 etc.

Legislative Approach

3.90 Section 61 of the Equality Act 2010 sets out that occupational pension schemes must be taken to include a non-discrimination rule. Section 61 therefore applies where individuals have suffered less favourable treatment and can operate to disapply discriminatory provisions in scheme regulations as they apply to that individual.

3.91 To avoid any confusion or unintended consequences where Section 61 would otherwise interact with this Bill, for example as a result of Section 61 being interpreted as meaning that a member is already in a legacy scheme, before the coming into force of Clause 2, Clause 27 disapplies Section 61 of the Equality Act 2010 for the purposes of determining whether a member's remediable service is pensionable in a new or legacy scheme. The Bill provides a remedy for the discrimination that arose in public service pension schemes, in doing so it directly determines of which scheme a person is a member in relation to their remediable service. This provision will prevent any inconsistency in interpretation or application between Section 61 of the Equality Act 2010 and the measures contained in this Bill. This section does not apply to persons who have received an immediate detriment remedy in order to ensure the Bill does not override or interfere with any remedy already provided under Section 61 of the Equality Act, except to the extent that provisions are necessary to ensure consistent treatment.

Clause 28 & 29: Application of Chapter to Immediate Detriment cases

Legislative Approach

3.92 The majority of members in scope of the PSP&JO Bill will not retire until after the remedy is implemented, and will be given a deferred choice with regard to their remediable service before their benefits are paid. However, the Government recognises that significant numbers of members have already retired and received pension benefits in respect of relevant periods of service or will do so between now and the introduction of the remedy by October 2023.

3.93 The Government has accepted that members who have remediable service and who moved to the new pension schemes on or after 1 April 2015 and have subsequently retired, already have an entitlement to be treated as a member of their legacy scheme for the remedy period if they wish. This is based on the view that section 61 Equality Act 2010 permits pension scheme regulations to be read as though discriminatory provisions do not apply, allowing members in this position to be treated as a member of their legacy scheme.

3.94 In recognition of this, the Government worked with schemes' responsible authorities to seek to develop processes to give effect to this entitlement for those who retired before the introduction of the full retrospective remedy. However, as work has continued on the drafting of the PSP&JO Bill, it has become clear that there are significant gaps and uncertainties around how certain aspects of the correction of an individual's pension arrangements should be handled within the current legislative framework. In particular, it is apparent that Section 61 Equality Act 2010 may not give all the powers required to give effect to these entitlements before the legislation is enacted. The provisions of the PSP&JO Bill will therefore give schemes the powers required to operate the remedy smoothly and predictably, without generating significant uncertainty for schemes, and risking unexpected outcomes for individuals.

3.95 Nevertheless, there will have been some individuals in this position who will have had their cases processed by scheme managers and received either a full or partial remedy ahead of legislation being in place. There may also be claimants in the ongoing employment tribunal litigation who have received a full or partial remedy as directed by the court or tribunal. These are known as "immediate detriment cases" and the members this applies to are defined in Clause 29 of the Bill.

Approach to Scheme Regulations

3.96 The policy intention is to ensure that the remedy that those in this position have already received is respected, but that appropriate alternative provision may also be made by scheme regulations to address their individual circumstances in order to ensure that the discrimination is rectified. In

particular, the intention is to ensure that these persons are not compensated twice, that the Bill does not override any prior court or tribunal orders, and that scheme regulations can make provision to correct or 'top up' any aspects of the remedy already provided to ensure consistent and fair treatment.

3.97 Consistent with this, where necessary scheme regulations will make provision to allow, as far as possible, those who have benefited from an immediate detriment remedy, to be put in the position that they would have been in if there had been no relevant breach of a non-discrimination rule in relation to their service.

3.98 This will include provisions in scheme regulations to apply any of Clauses 2 to 27 of the Bill to those who have benefited from an immediate detriment remedy, where this is necessary. It may also include provisions that apply any of these clauses in an amended form in order to achieve the effect of correcting or topping up aspects of the remedy that has already been provided in order to ensure fair and consistent treatment. Where scheme managers need to use these clauses to make further corrections to an individual's position, their tax position may also need to be revisited.

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Clause 76: Restriction of existing schemes

Legislative Approach

3.99 Clause 76 implements the prospective policy. With effect from 1 April 2022, all members in active service will be moved into the relevant reformed public service pension scheme, regardless of the operation of the retrospective remedy for that person, including which choice of scheme benefits they make for the remedy period under the deferred choice underpin. Those active members who are outside the scope of the McCloud remedy will already be members of such schemes during relevant periods of service falling in the remedy period. This will ensure all members have access to pension scheme benefits on a fair and equal basis from 1 April 2022.

3.100 This policy does not affect the benefits of pensioners or deferred scheme members although partial retirees, who are both pensioner and active members, would be affected in regard to their future accrual as active members from 1 April 2022 onwards. Any other re-employed pensioners, who are classed as active and pensioner members, will also be covered by the prospective remedy in relation to any accrual from 1 April 2022 onwards.

3.101 Clause 76 amends section 18 of PSPA 13 and PSPA NI 2014 relating to the restriction of existing pension schemes.

3.102 Clause 76(2)(c) is the key clause that implements the prospective remedy. This clause removes the powers in s.18(5) to (8) in PSPA 13 to make exceptions to the closing date of legacy schemes from 1 April 2022. This means that the powers which were used to introduce transitional and tapered protection in 2015 remain in place until 31 March 2022 but, from 1 April 2022, these powers lapse (apart from in relation to the 2 exceptions set out in Clause 77 and covered below). Once these powers expire, any exceptions previously made under those powers no longer have effect. This means that transitional and tapered protection can no longer apply from 1 April 2022. The equivalent NI clause is 76(5)(c), which removes the relevant powers from PSPA NI 2014.

Approach to Scheme Regulations

3.103 Consistent with the policy approach implemented by Clause 76, schemes must make provisions to remove any exceptions (apart from in relation to cases covered by Clause 77) previously made under powers in s.18(5) to (8) in PSPA 13 from 1 April 2022. This will ensure that transitional/tapered protection are removed from 1 April 2022, and all active members are moved into the new schemes from that date onwards.

Clause 77: Restriction of existing schemes: savings and transitional

Legislative Approach

3.104 The Bill includes two notable exceptions to the prospective policy related to i) transfers of service from certain public and private sector schemes which are not schemes under section 1 of PSPA 13 and ii) weighted accrual. These are implemented by Clause 77. It is important to note that neither of these exceptions allow for continued accrual in the main legacy public service pension schemes covered by remedy beyond 31 March 2022.

Transfers of service

3.105 There is a considerable group of schemes (other than those provided for by Section 1 of PSPA 13 or Section 1 of PSPA (NI) 2014) that have not been reformed in line with the main public service pension schemes, and so will continue to provide final salary benefits in relation to employment after the closure of the main public service schemes. Pension transfers from these unreformed schemes that would need to be made into legacy public service schemes can be considered as falling within four (not mutually exclusive) categories: (i) changes in pension scheme provision for individual public bodies, (ii) bulk transfers relating to machinery of Government and other changes in the structure and coverage of the public sector, (iii) transfers under Public Sector Transfer Club terms and under any similar arrangements and (iv) Fair Deal transfers.

Public body pension schemes

3.106 Public body pensions schemes cover certain workforces not at present covered by the main public service pension schemes, for example the Research Councils Pension Scheme or the UK Atomic Energy Authority Pension Scheme. The Public Service Pensions Act 2013 provided for these schemes to be subject to the general changes in public service pensions policy implemented for the main schemes in 2014 and 2015. However, reform has not yet been applied to most of these public body schemes, which would normally be achieved through closure of the public body scheme to future accrual, with all active members moving to one of the main public service schemes for future service and sometimes transferring past service too. Government policy has been to pause reform until McCloud has been resolved.

3.107 However, most of these schemes will not close prior to 31 March 2022, not least because the main public service schemes (that the members of these public body schemes might move to) will not have capacity to manage such change, including transfers of past service, alongside the implementation of scheme regulations under the Bill.

3.108 Government policy is to allow the public service pension schemes to be able to accept transfers into their legacy schemes in relation to any unreformed benefits in the public body schemes, even where that service was in relation to employment in the public body scheme after 31 March 2022 and/or where the transfer takes place after that date. Otherwise, the Government will create a barrier to reform and efficient pension provision by

preventing members from transferring their past service to a comparable scheme where they move to, for example, the new civil service scheme in relation to their future service.

Bulk transfers

3.109 There may also be changes in the structure and coverage of the public sector under, for example, machinery of Government changes that could bring new categories of member in future within the scope of a main public service scheme. Those could also involve bulk transfers of benefits from unreformed schemes relating to periods after 31 March 2022.

Public Sector Transfer Club

3.110 There will also be some individual transfers from unreformed final salary schemes, both public and private sector, which participate in the Public Sector Transfer Club. These need to be provided for if the Club is to continue. Government policy has been to maintain the Transfer Club and it is therefore necessary to allow the main public service pension schemes to be able to accept transfers into their legacy schemes in relation to any unreformed final salary benefits from schemes which participate in the Public Sector Transfer Club (or a similar transfer arrangement) and are not schemes under s.1 of PSPA 13, even where that service was in relation to employment in the Club scheme after 31 March 2022 and/or where the transfer takes place after that date. Otherwise, the Government will create a barrier to reform and efficient pension provision by preventing members from transferring their past service to a comparable scheme, which is something that the Public Sector Transfer Club promises.

Fair Deal transfers

3.111 The Fair Deal, first introduced in 1999, is a non-statutory policy setting out how pensions issues are to be dealt with when staff are compulsorily transferred from the public service employments to independent providers delivering public services. The objectives of the policy are to provide an appropriate level of protection to public service employees' pension provision when the services they deliver are outsourced, while delivering value for money for the taxpayer and removing barriers to plurality of service provision. In brief, under old Fair Deal, when an employee was compulsorily transferred out, the receiving employer (often in the private sector) was required to offer a scheme broadly equivalent to the public service scheme from which the employee had transferred (as a condition of the transfer).

3.112 The Government announced in 2012 that the Fair Deal was to be reformed. Staff who are compulsorily transferred from the public service are now offered continued access to a public service pension scheme rather than being offered a broadly comparable private pension scheme ("New Fair Deal").

3.113 For public sector employees who: (i) were transferred out under old Fair Deal; and (ii) subsequently transfer back to the public service, the Bill will ensure they are able to transfer their past service in a broadly comparable private sector "old Fair Deal" pension scheme into closed public service legacy schemes, regardless of when that transfer occurs and where that service

relates to a period of employment in the exporting scheme after 31 March 2022.

3.114 The Bill therefore ensures that anyone who has accrued service in one of these unreformed final salary schemes (which did not provide for transitional protection), and where there would be provision for a transfer to be made on a basis other than Cash Equivalent Transfer Value (CETV), can transfer that past service across into the relevant legacy main public service pension scheme, and can receive benefits accordingly, regardless of when that transfer occurs. This is not to be an exception to allow an individual to accrue benefits after the closure date in a main public service pension scheme in relation to employment under that scheme, but is instead about allowing the legacy scheme to receive final salary rights from an unreformed scheme and award equivalent benefits in relation to those, regardless of the period to which they relate. As noted, barring such benefits from being imported to the public service schemes would create a significant barrier to planned and future reform, prevent efficient pension provision by preventing members from transferring their past service to a comparable scheme, and prevent the operation of the Public Sector Transfer Club and New Fair Deal guidance.

Weighted accrual

3.115 The Government committed in its response to the McCloud consultation to continue the policy of protecting weighted accrual beyond April 2022. The commitment on weighted accrual is similar to the final salary link, but applies to length of service and relates to the older legacy schemes that provided for differential accrual, usually related to length of qualifying service.

3.116 The commitment on weighted accrual was an accrued right when legislating for the 2015 reforms, so a provision was made to ensure that, for those who continued in pensionable service, the accrual rate for the legacy pension would improve as expected in relation to those future periods of service, even though there was no more accrual in the legacy scheme. Clause 77 now ensures that the anticipated future value of the accrued legacy pension is maintained in relation to such future continuous service, including beyond 1 April 2022.

Approach to Scheme Regulations

Transfers of service

3.117 Clause 77(2)(b) provides that the repeal of s.18(5) to (8) of PSPA 13 does not affect any power to make scheme regulations under which benefits are paid to, or in respect of, a person in relation to service after 31 March 2022, which is transferred in from a scheme which is not a scheme under section 1 of PSPA 2013 (or section 1 of PSPA(NI) 2014). The equivalent clause for Northern Ireland is 77(5)(b). The member's future service after transfer would be covered in a new public service scheme. Therefore, schemes may still use powers under s.18(5) to (8) of PSPA 13 to make this narrow exception to the closing date for legacy schemes in regulations.

Weighted accrual

3.118 Clause 77(2)(c) provides that the repeal of s.18(5) to (8) of PSPA 13 does not affect any power to make scheme regulations which implement the policy of weighted accrual. The equivalent clause for Northern Ireland is 77(5)(c). Therefore, schemes may still use powers under s.18(5) to (8) to maintain the weighted accrual link beyond the closing date of the legacy schemes in scheme regulations.

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This document can be downloaded from www.gov.uk

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