

NHS Pension Scheme

2020/08

Who should read: NHS HR and Payroll Managers, GP Practice Managers, Direction Bodies, Practitioner Service Division (PSD), Dental Payments, Trade Unions

Action: For information

Subject: UK Government Consultation – addressing discrimination in public service pensions – update on employer cost cap

Date: 16 July 2020

The purpose of this circular is to inform scheme members and employers of the UK Government consultation on proposals to address the age discrimination in scheme reforms in 2015, and to provide an update on the cost control mechanism.

Background

1. Occupational pensions policy, including public service pensions, is reserved to UK Government, although Scottish Ministers have executively devolved competence to make regulations for five Scottish schemes. Following an independent commission the Coalition Government introduced new career average schemes through the Public Service Pensions Act 2013, which saw the existing schemes close and younger members move into the new schemes. However the 2013 Act allowed for exceptions to be made, and schemes included transitional protections to exclude those closest to retirement from the impact of reforms, allowing them to remain members of the pre-2015 schemes. Members within 10 years of normal retirement age were fully protected, and those between 10 and 13.5 years were afforded a degree of protection on a tapered basis between 2015 and 2022.

2. These provisions were challenged through the Employment Tribunal, initially by members of the Judges' and firefighters' schemes, although there are equivalent claims in the police, NHS, Civil service and teachers' schemes. In December 2018, the Court of Appeal found in a joint hearing on *McCloud* (Judges) and *Sargeant* (firefighters) that the transitional protections included in the reforms in 2015 discriminated against younger members on grounds of age. The UK Government sought leave to appeal the decision, which was refused, and in July 2019 the then Chief Secretary to the Treasury issued a [written ministerial statement \(HLWS1687\)](#) accepting the decision and explained the decision had implications for all public service pension schemes.

3. Scottish Ministers are respondents to claims brought in Scotland, including those in relation to the NHS Pension Scheme (Scotland). Claims in Scotland are being managed by the Scottish Government and are generally sisted behind the equivalent claims being managed by the UK Government.

Consultation

4. The UK Government has today begun a 12 week public consultation on two proposals to retrospectively address the discrimination found in the unfunded schemes. The consultation can be found [here](#). Proposals are designed to offer scheme members the choice of which scheme their benefits accrue from 2015 to the end of a “remedy period”. Stakeholders are being asked a number of questions, including whether this choice should be an Immediate Choice, or a deferred choice at the point of taking benefits.

5. In addition, the UK Government consultation confirms its current position on future plans for schemes. In a separate [written ministerial statement](#) (HCWS380) the Chief Secretary to the Treasury provides an update on the cost control mechanism in public service schemes which was paused whilst the financial implications of the Court of Appeal judgment were assessed. This is called the employer cost cap, which measures the costs of benefits accruing in a valuation period. Where costs are deemed to breach a 2% corridor either side of the target cost of the scheme, steps should be taken to address that breach. The cost cap element of scheme valuations will now resume. The UK Government has also restated plans to review the cost control mechanism

6. SPPA will engage with stakeholders through the respective pension scheme advisory boards over the course of the consultation. In addition, SPPA is assessing the immediate implications of the contents of the consultation and to identify members who may currently be affected by the discrimination.

7. Further information will be provided in due course. **There is no need for scheme members to contact SPPA at this time.** The UK Government has provided some Frequently Asked Questions in supporting documentation and these are reproduced below for ease of reference.

8. Separately, the Scottish Ministers will consult in the coming weeks on proposals to address discrimination in the local government pension scheme, in which a different statutory approach to transitional protection was taken.

Please contact sppapolicy@gov.scot if have any enquiries about this circular.

Greg Walker
Policy Manager
16 July 2020

Annex A

MEMBER FAQs (reproduced from gov.uk)

1. Who is in scope of the consultation proposals?

Scheme members who were serving on or before 31 March 2012 and still serving on or after 1 April 2015 will be in scope of these proposals. This includes those members who are currently active, deferred or retired, and those with a qualifying break in service of less than 5 years. You do not need to put in a legal claim to be eligible for the changes proposed in the consultation.

2. Why are members who joined after 31 March 2012 not in scope?

The Court of Appeal's ruling identified unlawful discrimination between older and younger members in service on or before 31 March 2012. It is therefore these groups that the government are now equalising treatment between.

3. What do I need to do?

The government is consulting on proposals to remove the discrimination. This is your opportunity to put forward your views. Details of how to respond are set out in the consultation document.

4. What are the deadlines to respond?

This consultation will run for 12 weeks and will close on Sunday 11 October. Details of how to respond are set out in the consultation document.

5. When will the government confirm details of the changes to pension schemes?

The government will make a decision on the changes following consideration of the consultation responses. After that it will be some time before any changes are implemented as they will require legislation and new systems to be put in place.

6. Why are these changes necessary?

The government is committed to removing the discrimination for all those affected. It cannot simply return everyone to their old scheme because many people are better off in the new schemes. The government is therefore giving members the choice.

7. Will those protected by transitional protection also receive a choice between the new and old schemes?

Yes, members who originally received transitional protection will also be provided with a choice of which scheme benefits they would prefer to receive for the remedy period.

8. What's happening after the remedy period?

The remedy period ends on 31 March 2022. After that all active members will be placed into their 2015 scheme.

9. How will this affect those who have retired or will retire before 2022?

All affected members will be given a choice between old and new scheme benefits for service between 2015 and their retirement date. Where possible the choice will be offered at retirement. Where this is not possible the choice will be offered as soon as practicable after legislative changes are implemented. Any change to benefits will be backdated.