



Llywodraeth Cymru  
Welsh Government

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Welsh Government  
Consultation Document

# Consultation on Remediating Age Discrimination in Firefighters' Pensions in Wales 2023

Date of issue: 31 March 2023

Action required: Responses by 23 June 2023

Mae'r ddogfen hon ar gael yn Gymraeg hefyd / This document is also available in Welsh  
Rydym yn croesawu gohebiaeth a galwadau ffôn yn Gymraeg / We welcome correspondence and telephone calls in Welsh

## Overview

We are consulting on amendments to firefighter pension schemes in Wales to implement a retrospective remedy, placing all members back into their legacy schemes for the period 2015-22 and offering members a choice of legacy scheme or 2015 scheme benefits, in line with the Public Sector Pensions and Judicial Offices Act 2022. It affects all firefighters in Wales who were employed in that capacity from 31 March 2012 to 1 April 2015.

The changes are part of a package of measures overseen by the UK Government to address the age discrimination in public sector pension schemes which the Courts have found to exist. While the Welsh Ministers have functions in relation to firefighters' pensions, occupational pensions in general are a reserved matter outside the powers of Senedd Cymru. The Welsh Ministers are thus obliged to implement the policy which is reflected in the Act.

## How to respond

To respond to this consultation, please complete the online form which can be accessed here:

<https://www.gov.wales/amendments-firefighters-pension-schemes-wales-2023>

Alternatively, respondents may use the separate response form provided, which can be emailed to [fire@gov.wales](mailto:fire@gov.wales) or sent to the address below.

The closing date for responses is 23 June 2023.

## Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

## Contact details

For further information:

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Email: [fire@gov.wales](mailto:fire@gov.wales)

This document is also available in Welsh: [hyperlink](#)

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The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

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For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the UK GDPR, please see contact details below:

Data Protection Officer:  
Welsh Government  
Cathays Park  
CARDIFF  
CF10 3NQ  
e-mail:  
[dataprotectionofficer@gov.wales](mailto:dataprotectionofficer@gov.wales)

The contact details for the Information Commissioner's Office are:

Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF  
Tel: 0303 123 1113  
Website: <https://ico.org.uk/>

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## Introduction

1. The Public Service Pensions Act 2013 (“the 2013 Act”) introduced comprehensive reforms of all public sector pensions in Great Britain. The overall aim was to reduce the cost of such pensions to the public purse, by introducing new schemes with a higher normal pension age (NPA) for all public servants, and providing that benefits in those schemes were to be calculated on the basis of career average revalued earnings (CARE) rather than final salary. The 2013 Act required the UK or (as appropriate) devolved governments to make regulations establishing such new schemes with effect from 1 April 2015, at which point existing schemes were closed, so that members could no longer accrue any pension in them (but with exceptions which we describe below).
2. Firefighters’ pensions in Wales are, uniquely, devolved to the Welsh Government. It therefore fell to the Welsh Ministers to make regulations establishing a new scheme for firefighters employed in Wales. The Firefighters’ Pension Scheme (Wales) 2015 (“the 2015 Scheme”) is governed by the Firefighters’ Pension Scheme (Wales) Regulations 2015<sup>1</sup> (“the 2015 Regulations”), which came into force on 1 April that year, as the 2013 Act required.
3. Prior to 2015 there were two pension schemes for firefighters in Wales, both with benefits calculated on a final salary basis:
  - a. The scheme established by the Firemen’s Pension Scheme Order 1992<sup>2</sup> (“the 1992 Scheme”), which was open to anyone commencing employment as a firefighter before 1 January 2006. This scheme has an NPA of 55 and a maximum accrual of 30 years’ service, although many firefighters are able to retire from age 50 as the scheme allows for *double accrual* of service after 20 years.
  - b. The scheme established by the Firefighters’ Pension Scheme (Wales) Order 2007<sup>3</sup> (“the 2007 Scheme”), which was open to anyone joining on or after 1 January 2006. This has an NPA age of 60 and a lower accrual rate than the 1992 Scheme. It also includes a “modified scheme” for retained (“on-call”) firefighters which essentially mirrors the terms of the 1992 Scheme for such staff.

## Transitional protection

4. Section 18 of the 2013 Act also allowed regulations to exclude certain categories of workers from the requirement to join the 2015 Scheme and allow them to remain in their existing scheme – or, to use the jargon, for them to receive “transitional protection”. An agreement between the Treasury and the Trades Union Congress proposed that such protection should be available to those

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<sup>1</sup> SI 2015 no.622 / W50

<sup>2</sup> SI 1992 no.129

<sup>3</sup> SI 2007 no.1072 / W110

closest to retirement age in their existing schemes, on the grounds that they may already have made plans for retirement and would have less time to adjust to the generally less beneficial terms of the new schemes.

5. Accordingly, the 2015 Regulations provided that anyone who was an active scheme member on 1 April 2012 and who was aged 45 or more on that date would remain in their former scheme permanently (“full protection”); and any active scheme member aged between 41 and 44 on that date would transition gradually into the new scheme over a period of five years from 2015 (“tapered protection”). All other new public-sector schemes made similar provision although the age criteria varied according to the NPAs in the existing schemes.
6. This policy of transitional protection based on age was, though, subject to legal challenge. In the cases of McCloud and others v Lord Chancellor and another (brought by a group of judges) and Sargeant and others v London Fire Commissioner and others (brought by a group of firefighters), the claimants argued that the policy amounted to unlawful direct discrimination on grounds of age (and in Sargeant, indirect discrimination on grounds of gender and race). The cases were heard separately before the Employment Tribunal in early 2017 but joined in subsequent proceedings. While the Employment Tribunal ruled in favour of the defendants in Sargeant, that was partly overturned by the Employment Appeal Tribunal and fully overturned by the Court of Appeal<sup>4</sup>, which held that age-based transitional protection as implemented gave rise to unlawful discrimination.

## **The remedy**

7. The Court of Appeal remitted to the Employment Tribunal the question of the remedy to which claimants were entitled. Those proceedings have now concluded, through an out of court settlement in October 2022. That dealt only with the direct losses and injury to feelings which the claimants had suffered. They and all others who suffered discrimination are also entitled to a broader remedy, as follows:
  - a. They are entitled to return to their former scheme, and to be treated as though they never left it in April 2015.
  - b. That remedy is to be available both to the claimants in the case and to all other scheme members in a similar position (i.e., who were in service on 1 April 2012 and 1 April 2015, but were too young on the former date to qualify for full protection). In the rest of this document, we refer to these as “affected members”.
  - c. However, some individuals may be better off in the 2015 Scheme, depending on their individual circumstances and preferences<sup>5</sup>. All affected members

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<sup>4</sup> [2018] EWCA Civ 2844

<sup>5</sup> For instance, the 2015 Scheme has a lower rate of employee contributions than the 1992 Scheme and no cap on accrued pension. It also pays benefits to a wider range of survivors of deceased scheme members but has a higher normal pension age and is calculated on a CARE basis, not final salary. Compared to the 2007 Scheme,

must therefore be given a choice between the 2015 Scheme and the scheme of which they were members prior to 1 April 2015 (which we refer to below as the “legacy scheme”).

- d. For the same reasons, members who were fully protected in 2015 are to have the same choice.
  - e. No remedy is to be available to anyone commencing employment on or after 1 April 2012 as they would or should have been aware of the scheme changes when they joined. The same goes for those who left employment on or before 31 March 2015. They have not suffered any discrimination.
8. As the problem affects all public-sector pension schemes, the overarching policy framework for the remedy is being coordinated by the Treasury. It decided that the original aim of reducing the cost of public-sector pensions remains valid; and that all scheme members (including those protected in 2015) must transfer into the 2015 Schemes from 1 April 2022. There was, obviously, no transitional protection on this occasion. This means that all public service pension scheme members will be treated in the same way going forward.
  9. There is thus a “remedy period” from 1 April 2015 to 1 April 2022. All affected members will, by default, revert to their legacy schemes for that period, and will have their pension entitlements and contributions calculated accordingly. However, they will also have the right to decide whether the pension they eventually receive should be based on their service during the remedy period being treated as service in the 2015 Scheme or in their legacy scheme.
  10. The Treasury also consulted extensively in Autumn 2020<sup>6</sup> on the mechanism by which members could make this decision. The options were “immediate choice”, i.e., a decision made once the relevant legislation came into force, and “deferred choice”, i.e., a choice made on retirement. The clear preference among respondees was for the latter, on the basis that it allowed scheme members to decide on the basis of certainty about their benefit entitlements under their legacy and 2015 schemes. Immediate choice, by contrast, would require firefighters to make assumptions about their future career progress and other life events, and risked discriminating against younger firefighters who would have to make more such assumptions and were therefore more likely to make what proved to be a sub-optimal choice. This was also the clear preference of all members of the Firefighters’ Pension Scheme Advisory Board for Wales<sup>7</sup>. Accordingly, the Chief Secretary to the Treasury announced in February 2021 that the deferred choice approach would be adopted for all schemes.
  11. The UK Parliament has since passed the Public Service Pensions and Judicial Offices Act 2022 (“the 2022 Act”) to implement these reforms, and to require or empower “responsible authorities” (i.e., the Welsh Ministers, as regards

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it has a higher rate of contributions but also a higher accrual rate, and lower rates of actuarial reduction for pensions taken before normal pension age.

<sup>6</sup> The consultation is available online [here](#).

<sup>7</sup> That is, the three Fire and Rescue Authorities in Wales; the Fire Brigades Union; the Fire Leaders Association; the Fire Officers Association; and the Fire and Rescue Services Association.

firefighters' pensions in Wales) to make the necessary changes to pension scheme rules. The 2022 Act also empowers the Treasury to make directions about how scheme rules must be amended in many circumstances.

12. The overall shape of the remedy and the other reforms are matters for the Treasury and the UK Government and Parliament. The Welsh Ministers are responsible for making and amending the rules of firefighters' pension schemes in Wales. However, occupational pensions in general, including those for firefighters, are a reserved matter outside the competence of the Senedd (meaning it cannot pass primary legislation in that area). This means that the Welsh Ministers are obliged to implement the position of the Treasury as reflected in the 2022 Act and in Treasury directions<sup>8</sup> under it. They cannot, for instance, decide that legacy schemes will not close, that the remedy should be available to those joining after 31 March 2012, or that a different kind of choice mechanism should be available to affected members. This consultation does not seek views on these and other matters on which the Welsh Ministers have no discretion, and the Welsh Ministers would be unable to take into account any such views that are received. This document was drafted before the Chancellor of the Exchequer delivered the 2023 Budget on 15 March. That contained some significant changes to pensions entitlement and their taxation. We do not believe at this stage that there are any direct effects on our proposals; but we will ensure that our final regulations take account of the Budget changes as appropriate.
13. Overall, then, there are three broad elements of the remedy package:
  - a. Transferring all remaining members of legacy schemes into the 2015 Scheme on 1 April 2022. This has already been done, under the Firefighters' Pension Scheme (Wales) (Amendment) Regulations 2022, on which we consulted in Autumn 2021.
  - b. Reverting affected members into their legacy schemes for the remedy period, and dealing with the consequences of that; and
  - c. Establishing the mechanisms by which affected members can choose, at the point of retirement (or immediately, if they have already retired), the scheme which applies to their service during the remedy period and providing for the consequences of such choices.
14. This consultation is concerned with the second and third of these elements. It will affect all firefighters in Wales who were employed in that capacity from 31 March 2012 to 1 April 2015 inclusive, or who have a break of service of less than 5 years covering one or both of those dates. We refer to these as **entitled members** (in that they are entitled to the remedies proposed in this consultation) and estimate that they include around 69% of serving firefighters in Wales. In summary, the effects are as follows.

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<sup>8</sup> The Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022 available online [here](#).



Joining date	Leaving date	Age on 1/4/2012	Remedy period membership	Post-remedy period membership	Choice on retirement
Before 1/4/2012	On or after 1/4/2015 (“entitled members”)	45 or older (“fully protected members”)	Legacy scheme (unchanged)	2015 Scheme (by prospective transfer)	<i>Option for remedy period membership in 2015 Scheme or legacy scheme</i>
Before 1/4/2012	On or after 1/4/2015 (“entitled members”)	44 or younger (“affected members”)	<b>Legacy scheme (by retrospective reversion)</b>	2015 Scheme (unchanged)	<i>Option for remedy period membership in 2015 Scheme or legacy scheme</i>
On or after 1/4/2012	Any	Any (“unaffected members”)	2015 Scheme (unchanged)	2015 Scheme (unchanged)	None
Any	Before 1/4/2015	Any (“unaffected members”)	Legacy scheme (unchanged)	Legacy scheme (unchanged)	None

15. This consultation is concerned with the proposals shown in red in the above table. The remainder of this document sets those out in detail. In many cases, our proposals simply reflect what the 2022 Act or Treasury directions given under it require the Welsh Ministers to do; and while we describe those proposals in full, we are not seeking views about them as we have no scope to vary them. The consultation questions focus on those matters where we are proposing to exercise discretionary powers which the 2022 Act confers on the Welsh Ministers.

## Draft regulations

16. A draft of the regulations that would give effect to some of these proposals is attached to this consultation, and the remainder of this consultation refers to specific provisions in them as appropriate. Although the draft exists only in English, the final regulations will be made in both Welsh and English.

17. It has not been possible to complete the drafting of these regulations in full before this consultation began. This is because of the great complexity and scope of the remedy we propose, and because detailed policy on some matters was still being determined well into 2023. We believe it is better to give scheme members, scheme managers and other interested parties proper advance notice of our proposals, and a full opportunity to consider them, than to delay the start of our consultation. That would mean significantly shortening the period for consultation if we are to meet the statutory deadline for the regulations coming into force (see below).

18. Accordingly, the attached draft of the regulations covers most of our proposals, including all matters which will affect, or could affect, all or most members entitled to remedy, such as scheme membership, contributions and choice mechanisms.

It does not cover our proposals on divorce and on transfers between schemes, but the policy intention for these areas is set out in chapters 7 and 8. Once drafting of those regulations is complete, we will share them with members of our Scheme Advisory Board.

19. This consultation will be shared directly with members of the Scheme Advisory Board as per our statement<sup>9</sup> made in compliance with section 21(2) of the 2013 Act.
20. The 2022 Act requires that the regulations must come into force no later than 1 October 2023. This will mean making them and laying them before Senedd Cymru no later than 10 September 2023. The final version will take account of comments we receive in response to this consultation.

### **The position in England, Scotland and Northern Ireland**

21. These proposals apply only to firefighters who are currently employed in Wales, or who were most recently employed in that capacity in Wales before retiring or otherwise leaving employment as a firefighter altogether. The Home Office is consulting on broadly similar proposals for firefighters in England<sup>10</sup>, as is the Scottish Government for firefighters in Scotland, and the Northern Ireland Department of Health for firefighters in Northern Ireland. Firefighters who have previous service in Wales but are now employed (or were most recently employed) as firefighters elsewhere in the UK should refer to these consultations instead.

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<sup>9</sup> The statement can be found on the Firefighters' Pension Scheme Advisory Board for Wales webpage, available here.

<sup>10</sup> [Firefighters' Pension Scheme retrospective remedy - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/firefighters-pension-scheme-retrospective-remedy)

## 1. Scheme membership

22. A fundamental part of the remedy is that all entitled members are to become members of their legacy schemes for the entirety of the remedy period, retrospectively. This is an automatic process and there is no need for individual firefighters to make any decisions about it. Section 2 of the 2022 Act provides directly for this, and that it must be treated as always having been the case.
23. For firefighters who were fully protected in 2015, this makes no difference as they never left their legacy schemes until all firefighters were transferred into the 2015 Scheme on 1 April 2022. However, for those who were transferred in 2015, this means they will revert retrospectively to legacy scheme membership for the entirety of the remedy period. This includes members who were given tapered protection in 2015; this is just as unlawful as full protection and will be replaced by full membership of the legacy scheme for the remedy period.
24. Section 2 of the 2022 Act provides directly for this “retrospective reversion” to legacy schemes. The draft regulations amend scheme rules to reflect this intention by effectively extending full protection to all entitled members, from when it was first applied on 31 March 2015 until the end of the remedy period. The draft regulations do this by introducing the concept of a “remedy member” as well as making consequential amendments as provided for in Schedule 2 of the draft regulations.
25. Retrospectively becoming a member of the relevant legacy scheme confers all the entitlements and duties of such membership too. Those include matters such as contribution and accrual rates, normal pension ages and the rules that apply to ill health retirement, divorce settlements and transfers between schemes. The consequences of that, and how we propose to handle them, are covered in the remaining sections of this document.
26. For the most part, this position is created directly by the 2022 Act, so we are not seeking any views about it. However, there are two categories of special cases on which we are making particular proposals. These are as follows.

### Multiple contracts

27. It is common for firefighters to have multiple employment contracts with the same employer. This could include separate contracts for wholetime and retained duty; or a basic contract as a firefighter and a separate one for specialist duties, for instance as a training instructor or urban search and rescue (USAR) technician.
28. We could deal with the effects of this on entitlement to remedy in either of two ways. Firstly, we could treat each contract separately, and provide that only those contracts which qualified (i.e., those which were in place from 31 March 2012 to 1 April 2015 inclusive) would confer an entitlement to remedy. Alternatively, we could provide that this applies to each individual, that anyone who was employed as a firefighter during this period is entitled to remedy, and that that remedy applies to all the contracts with the same employer that they

happened to have at any time in the remedy period.

29. We believe the latter approach is fairer, and it is the one we propose. This is because discrimination is experienced by individuals; it is not limited by whatever contractual arrangements an employer chooses to adopt. This also eliminates the risk of unduly different treatment between employers based on differences in those arrangements. Employers could, for instance, choose to pay for additional duty by amending an existing contract rather than concluding a separate one.
30. For example, assume Firefighter A joined the Service as a wholetime firefighter in 2010. He then concluded a second contract for retained duty with the same employer in 2016; and both contracts are still current. Under our proposals, firefighter A would revert to his legacy scheme (the 2007 Scheme in this case) as regards both his wholetime and retained contracts, even though the latter only began in 2016. More specifically, service under both contracts would be remediable service for the purposes of the 2022 Act and our regulations. That has to be right because if Firefighter A's employer had instead simply amended his existing contract to cover the retained duty, there would be no doubt that service under the whole of the contract was remediable service.
31. However, these proposals would not affect any contracts which do not yield any pensionable pay, for the obvious reason that pension scheme membership is irrelevant to them. This commonly applies to short fixed-term contracts, payment under which has been held not to be pensionable<sup>11</sup>. It would also not apply to multiple contracts with different employers. For instance, if Firefighter A had concluded a contract for retained duty with a different FRA in 2016, then that would not revert to the legacy scheme.

### *Consultation question 1*

How far do you agree with our proposal that, where an entitled member had multiple employment contracts during the remedy period with the same employer, all those contracts should be covered by the remedy, regardless of when they were entered into?

## **Opted out members**

32. Any member of a firefighters' pension scheme is entitled to opt out of membership of it at any time. This removes the obligation to pay contributions into the scheme but also naturally means that the individual does not accrue any further benefits in the scheme s/he has left.
33. Firefighters can and do opt out of scheme membership for any reason. However, we are aware that some members who were affected by the age discrimination identified in Sargeant chose to opt out of 2015 Scheme membership after they were wrongly transferred into it in 2015, because they believed that the terms of that scheme were inadequate or unfair. During the remedy period, over 300 firefighters opted out of 2015 Scheme membership, of whom around 30 appear to

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<sup>11</sup> See Booth and others v Mid and West Wales Fire and Rescue Authority, [2019] EWHC 790 (Ch)

have had sufficient service to qualify for the remedy and to be entitled to opt back in.

34. Section 5 of the 2022 Act requires the Welsh Ministers to make provision in scheme rules allowing such people the chance to opt back in to membership of their legacy schemes retrospectively, from the point that they opted out until the end of the remedy period. This would put them back in the position they would have been in if they had not been wrongly transferred in 2015. Clearly, opting back in creates a liability to pay the contributions that would have been payable had an individual not opted out.
35. A firefighter who has opted out in these circumstances must decide whether or not to opt back in; there is no automatic reversion here as there is with members who did not opt out. To inform that decision, scheme managers must send them a “remediable service statement” (see also paragraphs 184 and 185 below) setting out their benefits if they were to opt in, and the contributions that would become payable if they chose to do so. Each individual would then have up to a year from the date of that statement to decide whether to exercise that right, by informing the scheme manager in writing. After a year, the right would lapse if it had not been exercised.
36. These proposals are driven directly by the requirements in s.5 of the 2022 Act; and regulations 5 to 9 of our draft would give effect to them. The 2022 Act also allows (but does not require) the Welsh Ministers to impose conditions and limitations on the right to opt back in. In particular, it allows the Welsh Ministers to require those wishing to opt back in to prove that their original reasons for opting out were related to the discrimination they experienced.
37. We do not propose to create any such requirement. Firefighters do not have to give any reason for opting out, and many choose not to do so. So it would be hard for them to prove retrospectively that they opted out because of age discrimination, beyond making a simple assertion that this was the case. Equally, it would be hard if not impossible for a scheme manager to rebut such an assertion. This process would thus consume time and resources for no obvious benefit. Instead, we propose simply that any affected member who opted out of membership of the 2015 Scheme during the remedy period is to be entitled to opt back in to membership of her or his legacy scheme, without any need to demonstrate the reasons for the original decision.
38. We also do not propose to make any special provision for those who opted out before the 2015 Scheme came into force, whether or not that was because they did not agree with its terms. That is because everyone who opts out of an occupational pension scheme is automatically re-enrolled in it or its successor scheme 3 years later, under the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010<sup>12</sup>. At that point they can simply opt out again if they wish, and that would now trigger the right to opt back in to the legacy scheme retrospectively which we propose above. For instance, someone who opted out of membership of their legacy scheme in late 2014, because of

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<sup>12</sup> SI 2010 no.772

dissatisfaction with the terms of the impending 2015 Scheme, would be automatically re-enrolled in the 2015 Scheme in late 2017. If s/he then opted out again, s/he would now have the right to opt back in to her or his legacy scheme for the whole of the remedy period, but not any preceding period.

***Consultation question 2***

How far do you agree with our proposal that all affected members who opted out of 2015 Scheme membership during the remedy period should be entitled to opt back in to their legacy schemes retrospectively, without having to show why they originally opted out?

## 2. Contributions

39. All active members of all firefighters' pension schemes are obliged to pay contributions into them, in return for the benefits they will receive in retirement. Such contributions are normally paid by means of automatic deductions from pay. The rates vary according to salary level, such that higher-paid members pay a greater proportion of their salary in contributions.
40. Employee contribution rates also differ between the three schemes. The 1992 Scheme (and the modified scheme for retained firefighters) has the highest contribution rates and the 2007 Scheme has the lowest, with the 2015 Scheme being closer to the former than the latter.
41. Because of that, retrospectively reverting affected members into their legacy schemes necessarily means that each of them will have paid the wrong level of contributions during the remedy period. Those reverting to the 1992 Scheme will have paid too low a rate of contributions, while those reverting to the 2007 Scheme will have paid too high a rate.
42. For example, a wholetime active member in the competent firefighter grade currently earns £32,244 per year<sup>13</sup>. That equates to a contribution rate of 12.9% in the 2015 Scheme, 14.7% in the 1992 Scheme and 10.9% in the 2007 Scheme. Assuming for these purposes that neither the salary nor the contribution rates changed during the remedy period (which is not true, but does not alter the principle of the calculation), a firefighter wrongly transferred from the 1992 Scheme would have underpaid contributions of some £4,062.74<sup>14</sup> during the remedy period. On the other hand, a firefighter wrongly transferred from the 2007 Scheme would have overpaid contributions of some £4,514.16<sup>15</sup>.
43. As a general principle, the aim is to remove these anomalies, such that members pay the contributions they would have paid had they never left the legacy scheme. Where there is a deficit in contributions, the member will need to repay that to the scheme manager; and where there is a surplus, the scheme manager will need to repay that to the member. As with all sums owing as a result of remedy, these will be subject to interest calculated in accordance with Treasury directions.
44. However, there are two complicating factors in working this out. Firstly, pension contributions are not liable to income tax; they are deducted from pay before taxation is applied. This means that anyone who underpaid their contributions during the remedy period (e.g., those reverting to the 1992 Scheme) will have overpaid their income tax, because their taxable income was overstated. Equally, anyone who overpaid their contributions (e.g., those reverting to the

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<sup>13</sup> This does not take account of the outcome of the 2022 pay negotiations for firefighters, which were still continuing at the time of writing.

<sup>14</sup> The 2015 Scheme contribution rate is 1.8% lower than the 1992 Scheme rate for those in the competent firefighter grade. The underpayment over 7 years is therefore  $£32,244 \times 0.018 \times 7$ , or £4,062.74.

<sup>15</sup> The 2015 Scheme contribution rate is 2% higher than the 2007 Scheme rate for those in the competent firefighter grade. The overpayment over 7 years is therefore  $£32,244 \times 0.02 \times 7$ , or £4,514.16.

2007 Scheme) will have underpaid their income tax. So the amount of contributions surplus or deficit needs to be adjusted by the difference between the tax relief each member actually received and should have received. Sections 18 and 23 in the 2022 Act and Treasury Directions provide for this mechanism for deferred and pensioner members. Note that where there is a contributions deficit in respect of active members there is no need to correct for tax relief as repayments of the deficit made by the member will themselves be eligible for tax relief.

45. Corrections may also be necessary if a member breached the limit on annual pension savings (the “annual allowance”) during the remedy period, rendering them liable to an extra tax charge, but that proves not to be so once they revert retrospectively to their legacy schemes. Similarly, corrections may be required in the opposite situation where a member did not breach the limit on pension savings during the remedy period but will do so when they are rolled back into the legacy scheme from April 2023. Tax regulations made by HM Revenue and Customs will provide for the necessary amendments to correct that position for the tax years that are in scope (that is the four years prior to McCloud implementation in October 2023). We propose to amend scheme rules so that scheme rules will be adjusted so that members can use Scheme Pays arrangements for any Annual Allowance tax costs associated with in scope tax years. Corrections will not be made for members who have underpaid Annual Allowance in respect of out of scope tax years, but we propose that compensation would be provided for any overpayments that a member has made in out of scope years. This may be provided as cash compensation where the tax liability was originally met directly, or by an adjustment to their pension where a member originally used scheme pays.
46. Secondly, the 1992 Scheme (only) has a feature whereby anyone reaching 30 years’ pensionable service before reaching age 50 is entitled to a contributions holiday (i.e., they pay no contributions at all) between the date on which they reach 30 years’ service and their 50<sup>th</sup> birthday. This is because the maximum pensionable service in the 1992 Scheme is 30 years, yet it is not possible to retire until age 50, so contributions between those dates would yield no benefit to the member. Some of those reverting to the 1992 Scheme would have been entitled to this contributions holiday if they had never left it, and it must now be applied in working out the correct contributions position in such cases. Depending on the length of the holiday, it is possible for this to turn what would have been a contributions deficit into a surplus.
47. Scheme managers will thus be required to calculate the correct contributions position for each affected member, and to make arrangements for surpluses and deficits to be repaid to or by each member. This is likely to affect active and deferred members in particular, all of whom will have paid the wrong rate of contributions when they revert to their legacy schemes. Members who retired during the remedy period and are now receiving pension benefits (or, as the case may be, their survivors) will only be affected if they make an immediate choice (see chapter 3) for membership of a scheme which is different from the one from which they retired. In such cases, the recalculation of contributions and resulting payments should be made alongside each member’s immediate choice, with the



balance from both netted off. For instance, a member who retired on 2015 Scheme terms and makes an immediate choice election for the 1992 Scheme may well be liable to repay a contributions deficit but would be entitled to tax relief on those contributions and may also become eligible for a higher retirement lump sum. These sums should be netted off against one another and the balance paid to or by the scheme member.

48. If a member makes a deferred choice (see chapter 3) for remedy period membership in the 2015 Scheme, then the above position would have to be reversed. A deficit in contributions which the member had made good would be refunded to the member, and a surplus which had been refunded to the member would have to be repaid to the scheme manager – plus interest in both cases. However, see below under “indicative choice” for circumstances in which this does not apply.
49. These provisions are all directly required by sections 14 to 18 of the 2022 Act, and we are not seeking comments on them. However, in the interests of clarity, we have replicated them in Part 7 of our draft.

### **Employer contributions**

50. All employers of firefighters (i.e., Fire and Rescue Authorities) also make contributions to pension schemes, again at rates which differ between the three schemes. However, the effects of remedy on this will be reflected in future valuations of the 2015 Scheme, which in turn drive changes to employer contribution rates. There is no need now to correct employer contributions retrospectively for members who revert to their legacy schemes.

### **Making repayments**

51. Most if not all affected active and deferred members will thus have either a contributions surplus or a contributions deficit relating to the remedy period, calculated as above. Either way, that needs to be eliminated.
52. Where there is a contributions surplus (i.e., a member has overpaid her or his pension contributions, taking account of tax relief and any contributions holiday), we propose simply that the scheme manager must repay that, plus interest, to the member as a lump sum. We would expect scheme managers to do so promptly but are not proposing any particular deadline for this. Scheme managers would not be entitled to repay a surplus in instalments, or to treat it as a contributions holiday or pension credit. This is because those entitled to remedy have suffered discrimination and should be entitled to receive that remedy as soon as possible. However, in some circumstances the scheme member may choose to waive repayment of the surplus – see below under “indicative choice”.

53. Note that making repayments to members in these circumstances is a form of compensation as envisaged by section 23 of the 2022 Act. The provisions of that section, and the Treasury directions given in relation to them (which are [here](#)) directly bind scheme managers. We are not consulting on those requirements as they are not a matter for the Welsh Ministers; but we will consider with scheme managers whether further guidance on their effect would be helpful.

### **Consultation question 3**

How far do you agree with our proposal that scheme managers should be required to repay surpluses in contributions as a single lump sum only?

54. Where there is a contributions deficit, the position is more complicated. That deficit can easily run into thousands of pounds, and there is a risk of creating genuine hardship if we were to require members to repay large deficits as a single lump sum. Instead, we propose that members should be entitled to repay deficits either as a lump sum or in instalments, as they prefer. The terms of an arrangement to repay in instalments would be agreed with the scheme manager but in all cases could not exceed ten years. This is the same approach and timeline that we took when we introduced the modified scheme for retained firefighters: those wishing to purchase past service in that scheme were entitled to pay the necessary contributions in instalments over a period of up to ten years. However, to minimise administrative burdens, we propose that deficits of under £100 must be repaid by the member as a lump sum only.

55. Where the member with a contributions deficit retires on any grounds (or dies) before the end of a period of repayment in instalments, the balance still owing would be deducted from her or his retirement or death lump sum. However, we do not propose that members would have any other or more general right to repay a contributions deficit from their retirement lump sums, or to treat it as a pension debit. This would be to give them an entitlement effectively to trade lower contributions for a lower pension, which is not open to unaffected members of any scheme. Allowing only affected members to do so could lead to fresh claims of age discrimination.

### **Consultation question 4**

How far do you agree with our proposals that scheme members with a contributions deficit should be allowed to choose whether to repay it as a lump sum or (if the deficit is at least £100) in instalments over a period of up to 10 years?

## Indicative choice

56. As noted above, reversion to legacy schemes mean that some members will have overpaid their contributions during the remedy period. This will be especially true of those reverting to the 2007 Scheme, which has lower employee contribution rates than the 2015 Scheme. For many such members, the surplus in contributions could be several thousand pounds.
57. The proposals we have set out above would mean that the scheme manager would have to refund that surplus to each member. However, this would mean that, if a member chose on retirement to elect for remedy period service in the 2015 Scheme, s/he would then have to repay the refund, plus interest, to the scheme manager. Members are of course free to make such decisions – see Chapter 3 on choice mechanisms – but we expect many former 2007 Scheme members to elect for remedy period service in the 2015 Scheme, as it offers generally better pension benefits than the 2007 Scheme for those outside senior management grades. That being so, we believe they should be entitled to waive their refund of contributions to avoid having to repay it when they retire and opt for 2015 Scheme membership. This is sometimes known as “indicative choice”, as a member is effectively indicating a likely decision on retirement to opt for remedy period service in the 2015 Scheme.
58. It is also possible that those reverting to membership of the 1992 Scheme will have a surplus in contributions, especially if they become entitled to the full 2-year contributions holiday described above. They are perhaps less likely to opt for membership of the 2015 Scheme during the remedy period, as the 1992 Scheme is generally more beneficial. But we cannot rule that possibility out altogether – ultimately, this is a decision for each member.
59. Therefore, we propose that in all cases where members have overpaid contributions during the remedy period, the scheme manager should inform them of that and of the amount of refund (taking account of taxation and interest) to which they are entitled. The scheme manager should also explain that accepting the refund now would create a duty to repay it on retirement, plus interest, if the member opted for remedy period service in the 2015 Scheme. Each such member would then have up to a year to decide whether to accept or to waive the refund; if s/he did not make a decision within that time, the refund would be paid. Scheme managers would be bound to accept each member’s decision; it would not need their approval. Nor could scheme managers require members to waive a refund.
60. Members who did decide to waive the refund would still have a completely free choice on retirement about their legacy scheme membership; they would not be bound by their “indicative choice” in any way. If a retiring member who had waived a refund opts for 2015 Scheme membership, then no further action would be needed as regards contributions, as s/he would have paid the correct rate throughout. If, on the other hand, such a member opts on retirement for 2007 Scheme membership, s/he would then become entitled to a refund of contributions, plus interest.

61. For example, Firefighter B was wrongly transferred from the 2007 Scheme to the 2015 Scheme in 2015. During the remedy period, she paid £5,000 more in contributions to the 2015 Scheme than she would have paid to the 2007 Scheme. She could take that £5,000 refund now (minus a correction for tax relief and plus interest), but waives it on the basis that she is likely on retirement to choose remedy period membership in the 2015 Scheme and does not want to have to repay the refund then. On retirement, she becomes entitled to make a deferred choice election. If this is, as she anticipated, in favour of the 2015 Scheme then she simply receives a 2015 Scheme pension, with no correction needed to her contributions. Conversely, if she changes her mind and opts for the 2007 Scheme, then she becomes entitled to the same refund of £5,000 of excess contributions, again minus tax relief and plus a rather greater amount of interest.
62. These proposals are permitted (but not required) by section 18(8) of the 2022 Act, and are covered by regulation 64 in our draft.

#### ***Consultation question 5***

How far do you agree with our proposals that scheme members who are entitled to a refund of remedy period contributions should be entitled to waive it, to avoid having to repay it on retirement?

### 3. Choice mechanisms

63. Reversion to legacy schemes for the remedy period is only part of the remedy which we propose. For many firefighters, it will yield a higher pension than they would have had by remaining in the 2015 Scheme. However, all firefighters' schemes have many different parameters and conditions, and different individuals will have different views about which scheme offers the best result for them, based on their life circumstances and preferences. For instance, the 1992 Scheme has the most beneficial accrual rate of the three schemes, and the lowest normal pension age. But it also has the highest contribution rate and, alone among the three schemes, does not pay benefits to cohabiting partners if the scheme member dies. Balancing those and other features and deciding which option is preferable is an unavoidably personal decision.
64. So, it would be wrong to assume that remedy period membership of a legacy scheme will be the most beneficial or preferred outcome in all cases; and the only way to ensure the best outcome for each scheme member is to offer them a choice. That has long featured as a key part of the remedy proposals.
65. The 2022 Act requires that there are two types of choice:
- a. An **immediate choice**, made shortly after these regulations come into force, for entitled members who have already retired by 1 October 2023 (or who have already died); and
  - b. A **deferred choice** for entitled active or deferred members. For active members, this is to be made on retirement; for deferred members, it is to be made when their scheme benefits become payable – normally at state pension age.
66. In both cases, the choice facing members will be whether they want their remedy period service to be in their legacy scheme or the 2015 Scheme, although whatever benefits a member chooses, they will be paid through the member's legacy scheme. This will affect not only the amount of pension they are entitled to receive, but also the amount of retirement lump sum, the amount of over- or under-paid contributions and the treatment of other matters which may have occurred during the remedy period, such as divorce settlements, transfers into and out of a scheme, and the purchase of added pension. While members are to have a completely free choice between their options, it is clearly important that they fully understand all the consequences of that choice. That is why, in all cases, the 2022 Act requires that it must be informed by a **remediable service statement** (RSS) from the scheme manager setting out for each member what their entitlements and liabilities under each scheme would be. Chapter 9 explains our proposals on RSSs in more detail.

#### Immediate choices

67. Section 6 of the 2022 Act requires that entitled members who have already retired when these regulations come into force must be offered an immediate

choice between remedy period service in the 2015 Scheme or their legacy scheme. This affects those who have retired on grounds of age or ill health, although chapter 4 explains our further proposals on ill health retirements. For entitled members who have already died (whether or not they had retired), the same choice must be offered to their survivors – see chapter 5.

68. The effects of an immediate choice clearly depend on the choice that is made. If a member makes an immediate choice in favour of a scheme which differs from the one of which they were a member (or a member, disregarding the retrospective reversion to legacy schemes), then their pension will need to be recalculated to reflect their choice. If there are any calculations which rely on actuarial factors (such as those relating to commutation or late/early retirement), the calculations should be based on the appropriate factors which applied at the time. There will also need to be a correction to contributions during the remedy period, as explained in Chapter 2. On the other hand, members who make an immediate choice in favour of the scheme from which they retired, then there would be no change either to their pension benefits or contributions.

69. For example:

- a. Firefighter C retired in 2020. He was a protected member of the 1992 Scheme in 2015, and retired with a 1992 Scheme pension. If he makes an immediate choice in favour of the 1992 Scheme, nothing changes. If, however, his choice is in favour of the 2015 Scheme, then his pension would be recalculated accordingly; and he would be entitled to receive a refund of surplus contributions that he made between 2015 and 2020.
- b. Firefighter D retired in 2021. She was not protected in 2015 and transferred then from the 1992 Scheme to the 2015 Scheme, retiring as a member of the latter. If she makes an immediate choice in favour of the 2015 Scheme, then nothing changes. If, however, she opts for the 1992 Scheme then her pension would be recalculated on 1992 Scheme terms; but she would become liable to make good the deficit in contributions between 2015 and 2021.
- c. Firefighter E retired in late 2022. He was a protected member of the 2007 Scheme until being transferred into the 2015 Scheme in April 2022, and retired with a 2015 Scheme pension including remedy period service in the 2007 Scheme. If he makes an immediate choice for the 2015 Scheme, then his pension would be recalculated to include remedy period service in that Scheme, and he would become liable to make good the deficit in contributions between 2015 and 2022. If, though, he opts for the 2007 Scheme then nothing changes.
- d. Firefighter F retired in early 2023. She was not protected in 2015 and transferred then from the 2007 Scheme to the 2015 Scheme. She retired with a 2015 Scheme pension. If she makes an immediate choice for the 2007 Scheme then her pension would be recalculated to include remedy period service in that Scheme, and she would be entitled to receive a refund of surplus contributions she made during the remedy period. If, though, she

opts for the 2015 Scheme, then nothing changes.

70. In summary, the changes as a result of an immediate choice are as set out in the following table.

<b>Date of retirement</b>	<b>Protected in 2015?</b>	<b>Immediate choice</b>	<b>Result</b>
On or before 31 March 2022	Yes	Legacy scheme	Legacy scheme pension (no change)
On or before 31 March 2022	Yes	2015 Scheme	2015 Scheme pension Correction of benefits and contributions
On or before 31 March 2022	No	Legacy scheme	Legacy scheme pension Correction of benefits and contributions
On or before 31 March 2022	No	2015 Scheme	2015 Scheme pension (no change)
Between 1 April 2022 and 30 September 2023	Yes	Legacy scheme	2015 Scheme pension including remedy period based on legacy scheme service (no change).
Between 1 April 2022 and 30 September 2023	Yes	2015 Scheme	2015 Scheme pension recalculated to include remedy period service in 2015 Scheme. Correction of contributions
Between 1 April 2022 and 30 September 2023	No	Legacy scheme	2015 Scheme pension recalculated to include remedy period service in legacy scheme. Correction of contributions
Between 1 April 2022 and 30 September 2023	No	2015 Scheme	2015 Scheme pension (no change)

71. An immediate choice election must be made within a year of the member (or survivor, as the case may be) receiving the relevant RSS, although the scheme manager can extend that deadline if it appears reasonable to do so (for instance, if the member dies after receiving the RSS, so that the decision must now be made by the eligible survivor instead). If an immediate choice is not made before the deadline, then the default provisions set out below will apply.

72. These provisions are all required by sections 6 and 7 of the 2022 Act. They are reflected in regulations 11 to 13 of our draft.

73. The 2022 Act also allows, but does not require, the Welsh Ministers to make provision about the process for making an immediate choice. We propose simply to provide that an immediate choice election must be made in writing – whether in hard copy or electronically. We do not propose to stipulate a standard template or form of words for this, although scheme managers can develop one if they wish. We will also make provision about who can make an immediate choice election regarding a member who has died – see chapter 5.
74. We also propose to provide that a valid immediate choice election is irrevocable, i.e., the member cannot change her or his mind [unless they could show that the RSS they received was incorrect or misleading]. This is because the result of an immediate choice will lead straightaway to the payment of pension benefits which reflect that choice; and allowing it to be reversed could create a significant administrative burden.

### **Consultation question 6**

How far do you agree with our proposals that immediate choice elections must be made in writing, and will be irrevocable?

## **Deferred choices**

75. Entitled members who are active or deferred members when the regulations come into force on 1 October 2023 will make a deferred choice election on retirement (for active members) or deferred pension age<sup>16</sup> (for deferred members). Again, this is a choice between whether their remedy period service was in the 2015 Scheme or their legacy scheme.
76. The effect of a deferred choice election is more straightforward than that of an immediate choice election, because there is no pension already in payment that might need to be altered, and because the correction to remedy period contributions will already have been made. Furthermore, anyone who makes a deferred choice will retire as a member of the 2015 Scheme, with a 2015 Scheme pension and lump sum. The deferred choice simply governs how those benefits are calculated for the remedy period, i.e., whether pension was accrued during that period on 2015 Scheme or legacy scheme terms.
77. Further corrections to contributions will be necessary if a deferred choice member opts for remedy period service in the 2015 Scheme. This is because reversion to legacy schemes will already have given rise to the correction to contributions described in chapter 2. However, this will not happen if a member has made an “indicative choice” as described in that chapter, waiving their right to a refund of contributions, and then makes a deferred choice election for the 2015 Scheme. For example:

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<sup>16</sup> Deferred pension age is 60 in the 1992 and Modified Scheme, 65 in the 2007 Scheme and State Pension Age in the 2015 Scheme



- a. Firefighter G retires in 2030. He reverted to membership of the 1992 Scheme for the remedy period, repaid the deficit in contributions arising from that, and makes a deferred choice to retain that status. He will retire on a 2015 Scheme pension, but with pension accrued during the remedy period service calculated on 1992 Scheme terms; his contributions position will not change.
- b. Firefighter H retires in 2035. She reverted to membership of the 2007 Scheme for the remedy period, but waived her right to a refund of contributions as she expected to make a deferred choice in favour of the 2015 Scheme. If she makes such a choice on retirement, then she receives a 2015 Scheme pension with her remedy period service calculated on 2015 Scheme terms, and her contributions position does not change. If, though, she opts for remedy period service in the 2007 Scheme, then her pension would be recalculated accordingly, and she would become eligible for a refund of the excess contributions she paid in respect of the remedy period.

78. These provisions are required by the 2022 Act (in sections 10 and 11) and we are not seeking comments on them. They are reflected in regulations 15 to 19 of our draft.

79. Again, though, the 2022 Act gives the Welsh Ministers power to make provision about the timing of, and process for, a deferred choice election. On timing, we propose that a deferred choice must be made by the later of (a) a year before pension benefits become payable, and (b) the member giving notice under regulation 67(4) of the 2015 Scheme rules of their claim for pension benefits – effectively, giving notice of their intention to retire. We expect that in the great majority of cases it will be the latter date that applies, as most people give only a few months' notice of retirement. It clearly makes sense for a decision about which pension benefits to claim to be communicated along with or before such notice. But it would not be sensible to make a deferred choice more than one year before retirement, as benefits could well change during that period.

80. We also propose that a deferred choice may be revoked and remade if a member changes her or his mind before pension benefits come into payment. This is because the choice itself does not immediately lead to any benefits being paid, so there is no reason to prevent a member from making a different decision, provided that s/he does so before pension benefits come into payment.

81. As with immediate choices, we also propose that a deferred choice election must be made in writing, but we do not see any need to prescribe a particular template or form of words for this.

### ***Consultation question 7***

How far do you agree with our proposals that deferred choice elections:

- must be made in writing;
- must be made no later than the later of the date one year before benefits become payable, and the date the member gives notice of a claim for pension benefits; and
- can be revoked and remade by the member before benefits come into payment?

## **Transitional cases**

82. Special arrangements are, though, needed for members who wish to retire shortly after these regulations come into force on 1 October 2023. They will become deferred choice members on that date, but there will not be time for them to make a deferred choice election in line with the above proposals: they will very probably already have given notice, so the deadline for making such a choice will have passed. But it would clearly not be right to prevent them from retiring to allow time for such a choice.
83. We therefore propose that deferred choice members for whom the above deadline has passed on 1 October 2023 (e.g., they have already given notice of a claim for pension benefits) will be entitled to retire forthwith, without making a deferred choice election, with the assumption that their service during the remedy period was service in their legacy scheme. This is consistent with our default provisions set out below. After retirement, they would become entitled to make a choice similar to an immediate choice, with the same consequences for their pension benefits and contributions.
84. This is reflected in regulation 20 of our draft.

### ***Consultation question 8***

How far do you agree with our proposals that deferred choice members who wish to retire shortly after 1 October 2023, and for whom the deadline for making a deferred choice has already passed on that date, should be able to retire on the basis that their remedy period service was in their legacy scheme; and that they should be able to make an immediate choice themselves following retirement?

## Multiple contracts

85. As we noted in chapter 1, it is relatively common for firefighters to have multiple contracts with the same employer covering different types of duty. We proposed in that chapter that all such contracts in place during the remedy period should be covered by the remedy, regardless of when they were entered into.
86. We propose that each such contract should be the subject of a separate immediate or deferred choice by the member concerned – which means that entitlements under each contract will need to be set out separately on that member's RSS. That is consistent with the principle of giving entitled members the best possible outcome by way of a remedy. In many cases, members may well make the same choice in respect of all of their contracts; but that is a matter for them. As in Chapter 1, though, there would be no choice to be made in respect of short fixed-term contracts which did not generate any pensionable pay.

### *Consultation question 9*

How far do you agree with our proposals that members who have multiple contracts with the same employer should make separate immediate or deferred choices in respect of each contract?

## Default mechanism

87. It is possible that, for whatever reason, a member might fail to make an immediate or deferred choice by the deadlines set out above. For an immediate choice only, it is possible for the scheme manager to extend the deadline if it is reasonable in all the circumstances to do so. But there is still a need to make provision for cases in which members or their survivors do not exercise their rights to make a choice. Sections 8 (immediate choice) and 11 (deferred choice) of the 2022 Act allow scheme rules to do this.
88. It would be possible for the decision in these circumstances to revert to the scheme manager; and we are aware that proposals for some other public sector schemes may be along these lines. However, we believe that would place scheme managers in a difficult position. As we noted at the start of this chapter, pension schemes have several key parameters and entitlements, and the choice as to which is more favourable for a member is an unavoidably personal one. In particular, firefighters' schemes – uniquely in the public sector – have different contribution rates, so an entitlement to a higher pension will normally create a liability for a higher rate of contributions, and quite possibly to repay a contributions deficit. Scheme managers cannot be expected to know what a given member would prefer in these circumstances, so they cannot reasonably be asked to make a decision which will affect the whole of that member's retirement, and indeed the pension entitlements of any survivors of the member.

89. Therefore, we propose simply that, where a member does not make an immediate or deferred choice by the stipulated deadline, s/he is to be deemed to have chosen remedy period service in her or his legacy scheme, and to have their pension benefits and contributions calculated accordingly. This is in line with the default position as a result of section 2 of the 2022 Act. There would be no need for the scheme manager to make a decision. This makes it particularly important to inform members that they are free to make any choice they wish; but if they do not make a choice at all, then they will be treated as having opted for their legacy schemes.

#### ***Consultation question 10***

How far do you agree with our proposal that members or their survivors who do not make an immediate or deferred choice by the stipulated deadline should be deemed automatically to have chosen remedy period service in their legacy scheme?

#### **4. Ill health retirement**

90. Firefighting is a dangerous and physically demanding profession, and it is unfortunately quite common for firefighters to have to retire early on grounds of ill health. All three pension schemes make provision for this by allowing those who have to take ill health retirement (IHR) early access to their pensions, often on enhanced terms. In all cases, IHR is only granted on the advice of an independent qualified medical practitioner (IQMP) – normally a doctor specialising in occupational health. The amount of ill health pension under all schemes also depends on the degree of incapacity an individual has suffered: a “higher tier” pension is paid to those who are unable to undertake any employment, while a “lower tier” pension is paid to those who are unable to undertake the duties of a firefighter, but could still do other work.

91. However, other key ill health provisions of the three schemes differ. The 1992 Scheme is generally the most generous, for two reasons:

- a. Under the 1992 Scheme, a member would be deemed to be “permanently disabled” (and thus entitled to at least a lower-tier ill health pension) if her or his incapacity was likely to endure until at least the normal pension age of 55 in that Scheme. Under the 2007 and 2015 Schemes, the incapacity must be likely to endure until at least those Schemes’ normal pension age of 60.
- b. Eligibility for a higher tier ill health pension in the 1992 Scheme depends only on the member being unable to undertake any employment at the point s/he is assessed, whereas in the 2007 and 2015 schemes such incapacity has to be likely to endure until at least age 60.

92. The amount of ill health pension payable under each of the schemes also varies, in particular because of their different accrual rates.
93. These differences mean that ill health retirements which took place during the remedy period will need to be reconsidered. Retrospectively reverting affected members to their legacy schemes means that cases that did occur should have been assessed against legacy scheme IHR criteria rather than 2015 Scheme criteria. Furthermore, all members (including those who were fully protected) are to have a choice as to whether their remedy period service was in their legacy scheme or the 2015 Scheme. That also affects the IHR criteria and entitlements which should apply.
94. Note that this only applies to ill health retirements of entitled members which took place during the remedy period. Any such cases which arose after the end of the remedy period but before these regulations come into force on 1 October 2023 will rightly have been dealt with on 2015 Scheme terms, and there is no need to revisit them. Those members will, though, still be entitled to make an immediate choice about whether their remedy period service was in the 2015 Scheme or their legacy scheme, as set out in Chapter 3.
95. Overall, there are three possible outcomes to an IHR case, each of which is affected differently by the remedy proposals. These are as follows:
- a. IHR could be granted, i.e., the member retires with an ill health pension;
  - b. IHR could be turned down, and the member continues in employment;
  - c. IHR could be turned down, and the member dismissed on grounds of (e.g.) lack of operational fitness or poor attendance (although we expect such cases to be rare).

### **Cases where IHR was granted**

96. Where an entitled member retired on ill health grounds during the remedy period, we propose that the case should be reconsidered to determine if the member would have been entitled to IHR under the rules of the scheme other than the one from which s/he retired at the time. For affected members, who were wrongly transferred to the 2015 Scheme in 2015, this will be their legacy scheme; and for those who were fully protected in 2015, this will be the 2015 Scheme. Where the legacy scheme is the 1992 Scheme, this reconsideration will need a re-referral to an IQMP, to consider the medical evidence available at the time of the original IQMP assessment against the IHR criteria of the other scheme. Where the legacy scheme is the 2007 Scheme, no re-referral to an IQMP will be necessary as the IHR criteria for the 2007 and 2015 Schemes are effectively identical.
97. The outcome of such a reconsideration could be either that a member is entitled to an ill health pension under both the 2015 and legacy schemes, or that s/he is entitled to an ill health pension under the scheme from which s/he retired, but only to a deferred pension under the other scheme, payable at state pension age. We propose that scheme managers should calculate these entitlements and offer

members an immediate choice between them, albeit that the choice as between an ill health pension and a deferred pension will very often be in favour of the former.

98. Two examples may help illustrate these scenarios:

- a. Firefighter I suffered severe injuries from a fall in 2021, aged 50 and after having wrongly transferred to the 2015 Scheme from the 1992 Scheme. The prognosis was that this would require twelve months of rehabilitation, during which time Firefighter I would be unable to work at all, but after which he was likely to be able to resume employment (but with permanent mobility impairments which precluded him working as a firefighter at any point in the future). He was assessed as eligible for a lower tier 2015 Scheme ill health pension, as he would be unable to resume work as a firefighter after his rehabilitation but could undertake other work before reaching the normal pension age of 60. However, when reassessed under the 1992 Scheme, Firefighter I would be eligible for a higher-tier ill health pension, as his condition prevented him from working at all at the point of assessment, and was likely to last beyond that scheme's normal pension age of 55. Firefighter I thus has an immediate choice between a lower-tier 2015 Scheme ill health pension and a higher-tier 1992 Scheme ill health pension.
- b. Firefighter J was diagnosed with cancer in 2020, aged 54 and as a fully protected member of the 1992 Scheme. Her prognosis was that she would make a full recovery after two years of aggressive treatment, during which she would be unable to work as a firefighter (but could undertake other work). An assessment under the 1992 Scheme deemed her eligible for a lower-tier ill health pension, as she was unable to work as a firefighter until after the scheme's normal pension age of 55, but could have undertaken other work, and she retired accordingly. When re-assessed under the 2015 Scheme rules, she would not be entitled to IHR at all, as she could have resumed work as a firefighter before age 60. Firefighter J thus has an immediate choice between a lower-tier 1992 Scheme ill health pension and a 2015 Scheme deferred pension which she can claim on reaching state pension age.

99. Sometimes, these choices may seem self-evident: an ill health pension payable now may very often be obviously much better than a deferred pension payable in many years' time. However, we believe it is important to maintain the principle that scheme members should choose for themselves in all cases. It is, for instance, possible that they may prefer a 2015 Scheme pension because of its more generous terms for survivors (see Chapter 5).

100. In some cases (as with Firefighter J above) it may be arguable that a member should not have retired on ill health grounds at all, as s/he would have continued in employment if assessed under the criteria of the other scheme. But we do not think there is any practical way in which such members could have a right to be re-employed. Several years may have passed, during which the member was receiving pension benefits; and s/he may no longer have the requisite standard of fitness, training or knowledge to serve as a firefighter, even if vacancies were available. While it remains open to a scheme manager to offer re-employment if

appropriate, we do not think it would be sensible to try to guarantee that right.

101. Such specific provisions are not directly required by the 2022 Act, but there are powers within the 2022 Act to make provisions for such special cases. As such, we believe they are necessary to maintain an approach to remedy in cases of IHR which is consistent with that adopted for affected members generally. They are reflected in regulations 53 to 56 of our draft.

### ***Consultation question 11***

How far do you agree with our proposal that entitled members who were granted IHR during the remedy period should be reassessed against the criteria of their legacy scheme or 2015 Scheme as the case may be, and offered an immediate choice between the entitlements that result; but that they cannot have an automatic right to be re-employed?

## **Cases where IHR was not granted and the member continued in employment**

102. It is possible that a member could have been denied IHR when s/he was assessed against the criteria of the scheme of which s/he was a member, but would have been eligible if assessed against the criteria of their legacy scheme (in practice, only if this was the 1992 Scheme). That would generally mean that the member continued in employment. If Firefighter J above had not been fully protected, for instance, this is what would have happened to her as the 2015 Scheme criteria for IHR would not have been met.
103. Such members might be said to have a retrospective right to retire on ill health grounds if their cases were re-examined against 1992 Scheme criteria and if IHR under that scheme is shown to have been justified. However, we do not think it is possible to provide for this. Such members will have continued to work, to earn salary and to make pension contributions to the 2015 Scheme in the interim, and it would be practically impossible to reverse that position now. We therefore propose that there will be no requirement on scheme managers to re-examine these cases, or to offer any remedy other than the retrospective reversion and deferred or immediate choice which is available to all members.

### ***Consultation question 12***

How far do you agree with our proposal that scheme managers should not be required to re-examine cases where entitled members were not granted IHR and continued in employment?

## **Cases where IHR was not granted and the member was dismissed**

104. Finally, it is at least hypothetically possible that a member was considered for IHR, that the conclusion was that this was not justified, but that concerns about the member's fitness or attendance instead led to them being dismissed. This might, for instance, happen when suspected health issues were found to be attributable to poor diet and lifestyle choices rather than any permanent incapacity within the meaning of the relevant scheme rules. That would lead to an entitlement to a deferred pension at state pension age, rather than an ill health pension payable immediately. We expect such cases to be very rare, as FRAs should and do support firefighters to maintain operational fitness, and only dismiss on these grounds as a last resort. We cannot, though, rule out the possibility.
105. If such cases do arise, it is possible that a re-appraisal against 1992 Scheme criteria (where that is the relevant legacy scheme) leads to a finding that the member would have been entitled to IHR under that Scheme. That would lead to an immediate choice between a 1992 Scheme ill health pension and a deferred 2015 Scheme pension. We therefore propose to require scheme managers to re-examine any such cases, including a re-referral to an IQMP, and to offer such a choice to any member who would have qualified for IHR under the 1992 Scheme. We do not think it would be practical to guarantee re-employment to someone who had been dismissed in such a case.

### ***Consultation question 13***

How far do you agree with our proposal that scheme managers should be required to:

- re-examine cases where affected members whose legacy scheme is the 1992 Scheme were not granted IHR but were dismissed on related grounds of poor fitness and/or attendance? and;
- offer an immediate choice between a 1992 Scheme ill health pension and a deferred 2015 Scheme pension to any member who is found to have qualified for IHR under the former Scheme?

106. As ill health retirement is a particularly complex aspect of our proposals, the various possible permutations are summarised in the table below.



## Summary of ill health proposals and their outcomes

Legacy scheme	Protected in 2015?	Original IHR decision	Re-exam of case?	IQMP re-referral?	Outcome
1992	Yes	Retired	Yes	Yes	Immediate choice for 1992/2015 Scheme ill health pension if eligible for IHR under latter. If not, no action.
1992	Yes	Continued in employment	No	No	Deferred choice at retirement.
1992	Yes	Dismissed	No	No	Deferred choice at deferred pension age.
1992	No	Retired	Yes	Yes	Immediate choice for 1992/2015 Scheme ill health pension if eligible for IHR under former. If not, no action.
1992	No	Continued in employment	No	No	Deferred choice at retirement.
1992	No	Dismissed	Yes	Yes	Immediate choice for 1992 scheme ill health / 2015 scheme deferred pension if eligible for IHR under former. If not, deferred choice at deferred pension age.
2007	Yes	Retired	Yes	No	Immediate choice for 2007/2015 scheme ill health pension
2007	Yes	Continued in employment	No	No	Deferred choice at retirement.
2007	Yes	Dismissed	No	No	Deferred choice at deferred pension age.
2007	No	Retired	Yes	No	Immediate choice for 2007/2015 scheme ill health pension
2007	No	Continued in employment	No	No	Deferred choice at retirement.
2007	No	Dismissed	No	No	Deferred choice at deferred pension age.

## 5. Survivors and survivor benefits

107. All firefighters' pension schemes offer benefits to close relatives of scheme members who die, whether during or after active service. Such beneficiaries are normally spouses, partners or dependent children of the scheme member, and are known collectively as "survivors".
108. The remedy we propose in this consultation affects survivors and their benefits in similar ways to scheme members themselves. However, there are further complications arising from the different terms and eligibility criteria that the three schemes have. In particular, the 1992 Scheme does not pay survivor benefits to cohabiting partners, only to spouses and civil partners, while the 2007 and 2015 Schemes both do. All schemes pay benefits to surviving dependent children, but on different terms and at different rates. The same is true of "death grants" payable if an active member dies: for 1992 Scheme members this is twice the member's salary at the time of death, and is payable only to a spouse or civil partner, or to the estate of the deceased, while for 2007 and 2015 Scheme members, the death grant is three times salary, payable to anyone the deceased member had nominated.
109. In general, the death of an entitled scheme member triggers payment of pension benefits (to eligible survivors) in a similar way to retirement. So, survivors should, in principle, be treated in the same way as those who retire. That includes (a) a choice between legacy and reformed scheme benefits for the remedy period (provided that the deceased had not already made such a choice); and, based on that choice, (b) recalculation of pension and other benefits; and (c) retrospective correction of contributions that would have been due during the remedy period. The rest of this document sets out how we propose these provisions should work for active, deferred and retired members; in principle, the same provisions can and should also be applied to their survivors.

### The eligible decision-maker

110. However, the remedy depends fundamentally on the scheme member making an immediate or deferred choice for remedy period service in the legacy or 2015 Scheme. Clearly, that cannot happen if the member dies before having made such a choice. Instead, the choice would need to be made by a survivor of the scheme member who is entitled to receive survivor benefits.
111. It is entirely possible that there may be more than one such survivor, such as a spouse and one or more children. But clearly there can be only one choice, so there can only be one "eligible decision-maker" who is entitled to make the choice in place of the deceased scheme member. To ensure consistency, we propose that the eligible decision-maker should be identified as follows:

- a. Where there is only one adult entitled to receive a survivor's pension (regardless of whether there are any children also so entitled), s/he is the eligible decision-maker;
  - b. Where there are two or more adults entitled to receive a survivor's pension (regardless of whether there are any children also so entitled), the eligible decision-maker is the person who was spouse, civil partner or cohabiting partner (if any) of the deceased at the point of death; or if there is no such person, it is whichever of them they all agree should assume the role.
  - c. Where there is a single child entitled to receive a survivor's pension, or multiple children all residing in the same household (but no adults who are entitled), the eligible decision-maker is the parent or guardian of the child or children.
  - d. Where there are multiple children entitled to receive a survivor's pension living in at least two different households (but no adults who are entitled), the eligible decision-maker is whichever of the parents or guardians that all the parents or guardians agree should assume the role.
  - e. Where there is no agreement under (b) or (d) above, there would be no eligible decision-maker, and our default provisions set out in paragraph 116 below would apply.
112. Where, as in (b) or (d) above, there is a need for multiple individuals to agree on who the eligible decision-maker should be, we propose that scheme managers should be required to seek to identify all such individuals and to supply them all with a remediable service statement in respect of the deceased's service. Those individuals would then have six months to decide amongst themselves who would be the eligible decision-maker, and to communicate that unanimously and in writing to the scheme manager. The eligible decision-maker would then have up to a year to make an immediate choice, i.e., to decide whether the deceased's remedy period service was to have been in the 2015 Scheme or the legacy Scheme.
113. There is, though, a further complication. The different eligibility criteria for survivors' pensions between the schemes which we noted in paragraph 108 above mean that the identity of the beneficiary or beneficiaries (and thus the eligible decision-maker) depends on the scheme rules that are applied. In particular, a cohabiting partner is entitled to receive survivor benefits under the 2015 and 2007 Schemes, but not the 1992 Scheme. This creates the potential paradox that the eligible decision-maker could in some cases depend on the choice as between legacy and reformed schemes – while the intention is that the eligible decision-maker her/himself makes that choice.
114. For members who died on or after 1 April 2022, or who die in the future, this is not an issue: they were or will be active, retired or deferred members of the 2015 Scheme at the point of death, and the 2015 Scheme rules plainly apply to the identification of eligible survivors. However, for affected members who died during the remedy period, the issue is very real. They will all have been reverted

retrospectively to membership of their legacy schemes (or will have been protected members of those schemes all along), which means that those rules potentially apply, subject to the choice that the eligible decision-maker makes.

115. For example, suppose Firefighter K, who was wrongly transferred from the 1992 Scheme in 2015, died in 2020 while in a long-term cohabiting relationship with Ms L. K also had two teenage children from a previous relationship, a and b, who live with their mother X (from whom K was divorced). Under the 2015 Scheme, L would be the eligible decision-maker as she is the only adult entitled to receive 2015 Scheme survivor benefits. However, under the 1992 Scheme, she is entitled to nothing, although a and b would be entitled to higher benefits because there is no eligible surviving adult; and the eligible decision-maker would be X, as their surviving parent. Clearly, if L is the decision-maker she will very probably opt for the 2015 Scheme, as it is the only one to pay her a pension; while if X is, she may well opt for the 1992 Scheme, as it would give her children greater benefits (while denying anything to L). But that does not assist with identifying who the eligible decision-maker is in the first place.

116. We propose to resolve this conundrum by providing that the 2015 Scheme eligibility criteria are to be used to identify the eligible decision-maker. This means in particular that a cohabiting partner (who is eligible to receive 2015 Scheme survivor benefits) may be an eligible decision-maker, regardless of the scheme of which the deceased was a member. This is because we believe that the 2015 Scheme's broader approach is more likely to yield a fair result which was more in accordance with the reality of the deceased's domestic circumstances at the point s/he died. In the above example, for instance, it seems fairer that L, who was K's long-term partner when he died, makes decisions about survivor benefits arising from K's pension than for X, from whom he was divorced, to do so. However, this use of 2015 Scheme criteria would not constrain the eligible decision-maker's choice: s/he could still opt for remedy period service in the legacy scheme.

117. Such specific provisions are not directly required by the 2022 Act, but there are powers within the 2022 Act to make such provisions. As such, we believe they are necessary to allow the proper allocation of survivor benefits and a fair means for survivors to make choices about that. The regulations make provisions for eligible decision-makers throughout where it is necessary for there to be a decision maker. Schedule 1 provides who is an eligible decision-maker in various circumstances.

#### ***Consultation question 14***

How far do you agree with our proposal that, where an entitled scheme member dies without making an immediate or deferred choice:

- that choice should instead be made by an "eligible decision-maker" as defined in paragraph 111 above; and
- that the 2015 Scheme criteria should be used in all cases to identify the eligible decision-maker.

## **Circumstances in which no decision is necessary**

118. There are some circumstances in which these issues will not arise, or where they should be resolved other than by the eligible decision-maker. Most simply, where a member dies without leaving anyone entitled to a survivor's pension (i.e., no spouse, civil partner, cohabiting partner or dependent children), there is no need for an eligible decision-maker as there are no survivor benefits to be paid. A death grant will, though, be payable if the member died while still employed as a firefighter or shortly afterwards – see paragraph 127 below.
119. Our proposals above include circumstances in which possible eligible decision-makers must agree among themselves about who will act in that role. This would arise, for instance, if the deceased left no spouse or partner, but did have two dependent children who lived in different households, where the eligible decision-maker would be one of their parents or guardians. If they fail to agree on who that is, then we propose that the scheme manager must proceed as though an election for remedy period service in the 2015 Scheme had been made, and calculate and pay survivor benefits accordingly. This is different from our default proposals for deferred and immediate choice elections (see paragraph 89), where the default position would be a deemed choice in favour of the legacy scheme. But we believe that it would be more appropriate in cases where the member has died to default to the 2015 Scheme, because it pays benefits to a wider range of survivors and often at a higher rate. This will be particularly important for survivors of members who died during the remedy period, whose entitlements could change drastically depending on whether the deceased was deemed to be a member of the 2015 Scheme or a legacy scheme when s/he died.
120. The same would apply if an eligible decision-maker was identified, but s/he failed to make a choice within a year of receiving the RSS. The scheme manager would then deem that an election in favour of the 2015 Scheme had been made.
121. We also propose that if the deceased member actually made a valid immediate or deferred choice before s/he died, then that choice should hold. No survivor would be entitled to revisit it in any circumstances. This is because the choice is primarily that of the scheme member, not her or his survivors, and we believe it should be honoured.

122. Again, such proposals are not directly required by the 2022 Act, but there are powers within the 2022 Act to make such provisions and we believe they are necessary to allow for a proper and prompt allocation of survivor benefits.

### **Consultation question 15**

How far do you agree with our proposals that:

- If there is no agreement on the identity of the eligible decision-maker, or if the eligible decision-maker fails to make a decision by the deadline, the scheme manager must deem that an election for remedy period service in the 2015 Scheme has been made; and
- If a scheme member makes a valid immediate or deferred choice before s/he dies, that choice will be honoured and that no survivor would be entitled to revisit it.

## **Adjusting historic pensions and contributions**

123. In principle, once the eligible decision-maker has made the choice which these proposals envisage, then the consequences should be the same as for a living scheme member. If a survivor's pension is already in payment, then it may need to be adjusted to reflect the choice; and a correction to contributions made by the member during the remedy period will need to be made.

124. However, the eligible decision-maker's choice will affect all survivors' benefits, not just their own. In some circumstances, that could lead to survivor benefits having been overpaid. Where that overpayment was to the eligible decision-maker her or himself, we believe that it should be recovered, as it is a natural consequence of the eligible decision-maker's own decision (and the same will happen with retired members who make an immediate choice). But we do not think it would be right for the same to apply to other beneficiaries, as they will have had no say in the decision. This includes in particular all pensions payable to dependent children (who can never be eligible decision-makers). In such cases, we propose that any historic overpayment should be written off by the scheme manager. We also propose that, in all cases where the scheme member has already died, payments to surviving children who live in different households will not change. This is permitted (but not required) by sections 18(1) and 22(2)e of the 2022 Act.

125. For example, Firefighter M died in 2017 after being wrongly transferred from the 1992 Scheme to the 2015 Scheme. When she died, she was married to Mr N. M also has one child, c, from a previous relationship who lives in the same household as M and N. Under the 2015 Scheme of which M was a member when she died, N received an adult survivor's pension of £10,000 a year and c received a child's pension worth 25% of N's, or £2,500. N is the eligible decision-maker as the only adult survivor, and opts for the 1992 Scheme as this would give him a survivor's pension of £11,000 a year. This would, though, have the effect of

reducing W's pension to £2,062.50 per year (or 18.75% of N's), as required by the 1992 Scheme rules. All of the changes would be backdated to the time of M's death, but the overpayment to c that arises from that would be written off by the scheme manager.

126. We propose to take a similar approach with contributions surpluses and deficits arising from the eligible decision-maker's choice. They should be payable only to or by the eligible decision-maker her or himself; other beneficiaries would have no such obligation or entitlement. Again, we believe this is a fair and reasonable consequence of the eligible decision-maker's choice, just as it is for scheme members who make such choices themselves.

### *Consultation question 16*

How far do you agree with our proposals that:

- Historic overpayments of survivor benefits to survivors who are eligible decision-makers should be recovered from them, but overpayments to other survivors should be written off; and
- Only the eligible decision-maker would be eligible to receive a contributions surplus, or liable to repay a contributions deficit, arising from her or his choice.

## **Death lump sums**

127. All schemes provide that, when an active member dies, a lump sum (often known as a "death lump sum" or "death grant") becomes payable in addition to any survivor's pension. In the 1992 Scheme, this is twice the member's pensionable pay at the time of death, and is payable to the member's spouse or civil partner (or to the member's estate if there is no such person). In the 2007 and 2015 Schemes, the lump sum is three times pensionable pay, and the scheme manager has discretion as to the recipient – although members are permitted to nominate any recipients they choose (including relatives, friends or corporate entities such as charities) and it is universal practice for those nominations to be honoured.

128. For members who died on or after 1 April 2022, or who die in the future, there are no issues here. They will all have been members of the 2015 Scheme when they died, and the lump sum will be calculated and paid accordingly. As that lump sum is a simple multiple of pay at the time of death, the question of remedy period service is irrelevant. However, for 1992 Scheme members<sup>17</sup> who died during the remedy period, it will be necessary to revisit and possibly to recalculate the death lump sum based on the choice made by the eligible decision-maker.

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<sup>17</sup> There are no issues for members whose legacy scheme is the 2007 Scheme, because that pays death lump sums on identical terms to the 2015 Scheme.

129. If the eligible decision-maker opts for remedy period service in the scheme of which the member was a member when s/he died, there are again no issues, as the death lump sum would have been properly calculated and paid at the time. If, however, the eligible decision-maker opts for the other scheme (i.e., the legacy scheme for affected members, or the 2015 Scheme for protected members), then there are two possible scenarios:

- a. The death lump sum will increase (from 2x to 3x salary) if the deceased was a member of the 1992 Scheme when s/he died, but the eligible decision-maker opts for the 2015 Scheme. The increase should be paid in line with 2015 Scheme rules, i.e., at the scheme manager's discretion. It is not likely that the deceased will have made a nomination, as there was no right for 1992 Scheme members to do so, so the scheme manager may simply choose to pay the increase to the eligible decision-maker.
- b. The death lump sum will decrease (from 3x to 2x salary) if the deceased was a member of the 2015 Scheme when s/he died, but the eligible decision-maker opts for the 1992 Scheme. We propose that that surplus should be recouped if the original lump sum was paid to the eligible decision-maker, either as a lump sum or as periodic deductions from pension payments, as the eligible decision-maker prefers. But in line with our proposals above, if the recipient was someone else, or a corporate entity, or the estate of the deceased, then the surplus should be written off.

130. It is possible that an affected member may have died during the remedy period leaving no-one entitled to a survivor's pension, but with a nominee for a 2015 Scheme lump sum (say, a sibling). In such cases, we propose that the scheme manager should simply pay the 2015 Scheme lump sum, if they have not already done so. It would be pointless to offer that nominee a choice between a 2015 Scheme lump sum, and a 1992 Scheme lump sum, potentially minus a contributions shortfall, when the former is bound to be higher in all cases. There is no need to determine an eligible decision-maker in such cases, nor any need to make provision for this in our regulations.



131. Provisions dealing with death lump sums are required by section 14 of the 2022 Act. They are contained in regulation 66 of our draft.

***Consultation question 17***

How far do you agree with our proposals that:

- Death lump sums for members who died during the remedy period should be recalculated in line with the eligible decision-maker's choice, and any reduction in a lump sum paid to the eligible decision-maker should be recovered from her or him; but
- Surpluses in death lump sums that were paid to persons other than the eligible decision-maker, or to the deceased's estate, should be written off.
- Where an affected member died during the remedy period leaving no-one entitled to a survivor's pension, but with a valid nominee for a 2015 Scheme death lump sum, the scheme manager should simply pay that sum without needing to offer the nominee a choice.

## **6. Added pension benefits**

132. All firefighters' pension schemes allow members to purchase extra pension benefits if they wish. Again, the terms of this, and the rights to do so, vary between the three schemes. In the 1992 and 2007 Schemes, members can purchase additional years of pensionable service, in units of 1/60 of pensionable pay (that being the accrual rate in these schemes). In the 2015 Scheme, members can purchase additional pension benefits directly (in effect, increasing their contribution rate), for any sum they choose up to a maximum amount. In all cases, added pension benefits can be paid for in instalments, or (with some restrictions) by lump sum.

### **Purchases of added pension during the remedy period**

133. Our overall approach to remedy is to place affected members in the position they would have been in if they had not been wrongly transferred into the 2015 Scheme. In principle, we would therefore seek to treat any added pension purchased during the remedy period as though it had been purchased in the legacy scheme. So a member who purchased additional 2015 Scheme pension in (say) 2020 would have that converted into legacy scheme additional years when s/he reverted to their legacy scheme.

134. However, it is not possible directly to make this conversion between additional pension purchased in the 2015 Scheme and additional years of pensionable service in the 1992 or 2007 Schemes in all circumstances. Section 20 of the 2022 Act only allows scheme rules to provide for conversion between benefits of an "equivalent value"; and it is not possible to say that a sum of additional pension is of "equivalent value" to a number of extra years' service, because the value of those extra years can only be known when the member retires. We have considered whether it would be possible to use other ways of creating additional benefits in the legacy schemes, such as by treating the value of additional pension in the 2015 Scheme as a temporary addition to pensionable pay in a legacy scheme. But we do not think that would be fair to unaffected and protected members, who have no such rights.

135. Instead, therefore, we propose simply that affected members who purchased 2015 Scheme additional pension during the remedy period will receive a refund from the scheme manager, plus interest. There is, though, an exception to this. Those members who are entitled to make an immediate choice (i.e., who have already retired when these regulations come into force on 1 October 2023) will not receive the refund until they have made that choice, and only then if they opt for remedy period service in their legacy scheme. If they opt for the 2015 Scheme, then the additional pension that they purchased will be added to their pension in that scheme in the normal way.

136. Section 20 of the 2022 Act enables scheme regulations to make such provisions. They are reflected in regulations 31 and 32 of our draft.

### **Consultation question 18**

How far do you agree with our proposals that:

- Entitled members who purchased 2015 Scheme additional pension during the remedy period will be able to receive a refund of the cost of that, plus interest; but
- Members who are to make an immediate choice will not receive that refund if they make an immediate choice in favour of the 2015 Scheme.

## **Retrospective purchase of added pension benefits**

137. Reverting affected members into their legacy schemes also creates a retrospective right to purchase added pension benefits in those schemes. In other words, such members would have been able to purchase such benefits at the time, and should now have the right to do so. Section 25 of the 2022 Act enables scheme regulations to confer that right, and we propose to do so: it is reflected in regulation 33 of our draft.

138. Any such retrospective purchase would naturally be governed by the rules of the legacy scheme. For instance, the 1992 Scheme only allows purchase of additional years by lump sum within three years of joining the scheme; that option would not be open retrospectively to affected members, as it would not have been open to them at the time had they not been transferred. We propose that any retrospective decision to purchase added pension benefits would have to be made within one year of the member receiving her or his initial remediable service statement. The cost of added pension benefits purchased retrospectively would also be subject to interest; but otherwise, affected members would be able to purchase added pension in their legacy schemes retrospectively in the same way as they would have been able to do if they had not left those schemes in 2015.

139. As required by Section 25(2) of the 2022 Act, scheme rules will limit this right to cases where the scheme manager is satisfied that the member concerned would have bought added pension benefits in their legacy scheme if they had never left that scheme. We do not think there is much value in such a provision, because in most cases there will be no evidence either way except a simple assertion by the scheme member, which the scheme manager could not rebut. But we are bound by the terms of the 2022 Act.

### ***Consultation question 19***

How far do you agree with our proposals that:

- Affected members would have a right retrospectively to purchase added pension benefits in their legacy schemes during the remedy period, on the same terms as applied to such purchase and with the cost of doing so adjusted for interest; and
- Any such choice must be made within one year of a member receiving her or his initial remediable service statement.

## 7. Divorce and dissolution

140. When a marriage is ended by a divorce, or a civil partnership is dissolved, it is common for the court to take into account the pension entitlements of the parties to the divorce or dissolution in agreeing a financial settlement between them. This is as true for firefighters as it is for all other occupations. The position is also identical as between divorces and dissolutions, and our proposals apply equally to both processes.
141. The person whose pension benefits are being dealt with in this way is known as the *pension debit member*; and the other party to the divorce or dissolution, who is to receive some of the pension debit member's benefits, is the *pension credit member*. A pension credit member becomes a member of the scheme in their own right. The decisions made by the court usually rely on the scheme manager calculating a *cash equivalent transfer value* (CETV), i.e., the current value of the member's pension benefits expressed in cash terms. Once a CETV has been calculated and provided, there are three approaches which the court can take:
- a. A *pension attachment order*, under which a proportion of the pension debit member's pension benefits is allocated to the pension credit member at the point that those benefits become payable (e.g., when the pension debit member retires). Pension attachment orders are now relatively uncommon, because the future value of the pension debit member's benefits cannot be known at the time of the divorce or dissolution, risking unfairness to either of the parties.
  - b. A *pension sharing order*, which avoids these problems. Under such an order, a proportion of the pension debit member's pension benefits accrued up to the point that the divorce or dissolution is granted is allocated to the pension credit member. Future benefits accrued by the pension debit member are not shared with the pension credit member.
  - c. *Pension offsetting*, in which the value of the pension is netted off against the value of other assets held by the couple, and those assets are then distributed between the parties accordingly. For instance, the member could retain all of her or his pension benefits, but receive a proportionately smaller share of the equity in the marital home.
142. Our proposed remedy, and the decisions which entitled members will make as part of it, may very well change the ultimate value of their pension benefits. That means the CETVs calculated for them as part of a divorce or dissolution, and the benefits payable to both parties, may well also need to change. However, pension credit members have not themselves experienced any discrimination. They are thus not entitled to remedy themselves, or to make any form of immediate or deferred choice. The proposals we set out here are aimed simply at ensuring that the system continues to work fairly after adjustments for the remedy provided to entitled pension debit members are made. They work by

adjusting the pension benefits to both parties; there would be no need for the court to re-examine the orders it had made.

## **Pension attachment orders**

143. As noted above, pension attachment orders have inherent uncertainties. Unless the pension debit member had already retired at the point of divorce or dissolution, it is impossible to know for sure what her or his pension benefits will ultimately be, as that will depend on future earnings and career decisions. It follows that it is also impossible to know the exact value of a proportion of those benefits covered by a pension attachment order.
144. For that reason, we do not propose to take any action as regards entitled members for whom a pension attachment order is already in force, but whose pension has not yet been put into payment when our regulations come into force on 1 October 2023. Such members will be entitled to make a deferred choice election, and that election could mean the value of their pension benefits (and thus the CETV) was different from that envisaged at the time of divorce or dissolution. But the change in benefits for the pension credit member resulting from a retrospective recalculation of the CETV may in many cases be much less than that resulting from (say) the pension debit member being promoted at some point in the future, or retiring on grounds of ill health.
145. However, the position is different in cases where a pension attachment order is in force, and the pension debit member's pension is already in payment. Here, the pension debit member will make an immediate choice between remedy period service in the 2015 Scheme or their legacy scheme. That choice could have the effect of reducing their annual pension, which would reduce the value of the share of it payable to the pension credit member too. Such a reduction would normally be backdated to the point of retirement and recovered from the scheme member. But we think it would be unfair to apply the same rule to the pension credit member, who will have had no involvement in the immediate choice decision. As with survivor benefits payable to people other than the eligible decision-maker (see chapter 5), we therefore propose that the scheme manager should write off the historic overpayment to the pension credit member in such circumstances. Naturally, if the pension debit member makes an immediate choice which increases the value of her or his pension, then the value of the pension credit member's share will increase too.
146. For example, Firefighter O divorces Mr P in 2018, while a fully protected member of the 1992 Scheme. As part of the divorce settlement, P is awarded 40% of O's final pension under a pension attachment order; and when O retires in 2020, P receives £8,000 of her £20,000 annual pension. O now makes an immediate choice for remedy period service in the 2015 Scheme, and her total pension reduces from £20,000 to £18,000, so P's share of it will fall from £8,000 to £7,200. However, the historic overpayment to P (£800 per year, or £2,400 by 2023) would be written off and not recovered from him.

147. If, though, the position had been reversed and O had been wrongly transferred from the 1992 Scheme in 2015, then her pension on retirement would have been £18,000 and P's share of it would have been £7,200. If O then makes an immediate choice for remedy period service in the 1992 Scheme, her pension would increase to £20,000 and P's share of it would increase to £8,000, with both increases being backdated to the date of O's retirement in 2020.

148. For divorces and dissolutions taking place after our regulations come into force, and where the pension debit member has yet to retire and make a deferred choice, we propose that the court should receive two CETVs, one each for remedy period service in the 2015 and legacy schemes. It should then use the higher of the two as the basis for making a pension attachment order (if it chooses to make such an order).

149. For future divorces and dissolutions where the pension debit member has already retired and made an immediate or deferred choice, then the (single) CETV should simply reflect that choice; a pension attachment order can then be made in the usual way. We do not believe any particular provision is needed for this in our regulations.

### ***Consultation question 20***

How far do you agree with our proposals for pension attachment orders, namely that:

- Where a pension attachment order is already in force but the pension is not yet in payment, no action is to be taken;
- Where a pension attachment order is already in force and the pension is already in payment, the pension payable to the pension credit member may change as a result of the pension debit member's immediate choice, but that any historic overpayment of such pension arising from the choice is written off;
- For divorces and dissolutions taking place in the future but before the pension debit member has made a deferred choice, CETVs for remedy period service in the 2015 and legacy schemes should be calculated, and the court should use the higher of the two.

## Pension sharing orders

150. As noted above, pension sharing orders are concerned only with the pension benefits which the pension debit member has accrued at the point of divorce or dissolution, as reflected in a CETV calculated at that point. This means that pension sharing orders which were made as part of divorces or dissolutions which took place before the remedy period (i.e., on or before 31 March 2015) will be completely unaffected by our proposals, as they do not cover pension accrued during the remedy period. It also means that the uncertainty inherent in pension attachment orders and pension offsetting arrangements because of the unknown future value of the debit member's pension does not arise. But there are other complications that our proposals address.

### *Pension sharing orders already in place*

151. Where a pension sharing order is already in place when our regulations come into force on 1 October 2023, our proposals would have the following effects. Firstly, the fact that members have a choice of legacy or new scheme benefits for the remedy period means that, for active and deferred debit members, there become two possible pension debits – one based on their remedy period service in the 2015 Scheme and one on such service in their legacy scheme, but both based on the proportions specified in the pension sharing order. We propose that both will need to be calculated and shown on each member's remediable service statement. For retired members, there are the same two possible pension debits which need to be included in their RSS, to inform their immediate choice. Clearly, once the debit member makes an immediate or deferred choice, her or his pension is put into payment with the appropriate debit deducted.

152. For example, Firefighter Q divorced Ms R in 2020, having been wrongly transferred from the 1992 Scheme in 2015. The CETV calculated for the court at that point valued Q's pension benefits accrued up to that point at £10,000, and the court awarded R 50% of those by way of a pension sharing order. On reversion to the 1992 Scheme, the CETV is recalculated and values Q's benefits at the point of divorce at £12,000. The debits to be shown on Q's RSS, and to be applied when she makes an immediate or deferred choice, are thus £5,000 (for remedy period service in the 2015 Scheme) and £6,000 (for remedy period service in the 1992 Scheme).

153. The position in such cases is more complex as regards pension credit members. They do not have any pensionable service which can be reverted into the legacy scheme. But they do have a share of the pension debit member's benefits as accrued prior to and during the remedy period, i.e., they potentially have pension credit benefits in both the debit member's legacy scheme and the 2015 Scheme<sup>18</sup>.

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<sup>18</sup> NB that if the pension debit member only had, and could only ever have, 2015 Scheme or legacy scheme service, that could only be because i.e., s/he commenced employment on or after 1 April 2012, or left on or before 31 March 2015. That means s/he would not be an entitled member, so there would be no effect on a pension sharing order.



154. To address this, we propose to require scheme managers to calculate a CETV for remedy period service in the scheme other than the one of which the debit member was a member at the point of divorce or dissolution. If that was higher than the CETV provided to the court, then the difference would be awarded to the pension credit member as an additional pension credit. This approach gives the pension credit member a fair share of the higher of the possible values of the debit member's benefits at the point of divorce or dissolution. Using the above example, Ms R would receive an additional pension credit of £1,000, reflecting the difference between the CETV used at the point of her divorce (and based on Q's service in the 2015 Scheme) and the higher CETV based on Q's service in the 1992 Scheme. Note that this credit would be independent of, and unaffected by, any immediate or deferred choice election made by the pension debit member.

155. The obvious approach then would be for the credit to be applied to the pension credit member's benefits in whichever of the schemes had yielded the higher CETV. However, it would also be possible to give the pension credit member a choice as to whether that credit was to be applied to their 2015 Scheme benefits or their legacy scheme benefits. That would be consistent with the general principle of members (including in this case pension credit members) deciding for themselves which option is best for them. On the other hand, it is arguable that pension credit members have suffered no discrimination and should not be entitled to a choice akin to that which will be available to full scheme members. We would be grateful for views on whether offering pension credit members a choice in these circumstances is justifiable.

### ***Consultation question 21***

How far do you agree with our proposals for pension sharing orders already in place on 1 October 2023, namely that:

- Remediable service statements for entitled pension debit members include pension debits based on remedy period service in the legacy and 2015 Schemes (and immediate and deferred choices are made accordingly);
- Scheme managers should recalculate CETVs at the point of divorce or dissolution based on the scheme of which the debit member was not a member at the time; and
- If that CETV is higher than the one used by the court, then the pension credit member should receive a pension credit for the difference between them.

### ***Consultation question 22***

Do you favour such a pension credit being applied automatically to the pension credit member's benefits in whichever scheme had the higher CETV; or should such members be offered a choice about that?

### *Future pension sharing orders*

156. For pension sharing orders that are made as part of divorces or dissolutions taking place after our regulations come into force, the procedure would be different. Active and deferred pension debit members will by then automatically have reverted to their legacy schemes, so the CETV provided to the court (and the benefits provided to the pension credit member) should reflect that.
157. When such members come to make a deferred choice, it will be necessary to adjust the pension debit if they opt for remedy period service in the 2015 Scheme. But we do not see any need to adjust the pension credit member's position: s/he will still receive benefits based on pension accrued at the point of the divorce or dissolution.
158. For retired members who enter into a divorce or dissolution after making an immediate or deferred choice, the CETV and any pension sharing order resulting from it should clearly be based on that choice.

#### ***Consultation question 23***

How far do you agree with our proposals for pension sharing orders that are made on or after 1 October 2023, namely that:

- For active and deferred members, the CETV provided to the court should be based on remedy period service in the legacy scheme.
- Where such members then make a deferred choice for remedy period service in the 2015 Scheme, their pension debit is adjusted accordingly (but the pension credit member's benefits do not change); and
- For retired members who enter into a divorce or dissolution after making an immediate or deferred choice, the CETV provided to the court reflects that choice.

### **Pension offsetting**

159. Where a court decides to offset the value of a pension against other assets forming part of the divorce or dissolution settlement, the effect of the remedy we propose is limited and the process of accounting for it is relatively simple. This is because pension benefits remain payable only to the scheme member, and not to the other party to the divorce or dissolution; the equivalent value of a share of them is awarded to that other party in the form of a greater share of those other assets. The issue is only whether the CETV that is used to determine that value remains valid.
160. For divorces or dissolutions which have already taken place when our regulations come into force, and for which a pension offsetting approach was

used, it is possible that the CETV used by the court could prove to be inaccurate depending on the immediate or deferred choice made by the scheme member concerned. However, and as we noted above in paragraph 141, there is an inherent uncertainty about the future value of pensions in any event; and we do not believe there is a justification for attempting to recalculate CETVs retrospectively. Furthermore, as there is no pension credit member under these arrangements, the situation could not be rectified by adjusting pension benefits. Nor is it generally possible to apply to the court to vary offsetting arrangements made as part of a divorce or dissolution settlement.

161. Where a divorce or dissolution takes place after our regulations come into force, but before the entitled member has made an immediate or deferred choice, the process is similar to that for pension attachment orders. Two CETVs should be calculated, based on remedy period service in the legacy and 2015 schemes, and the court should use the higher of the two as the basis of an offsetting arrangement. That again would not change as a result of an immediate or deferred choice made by the entitled member.

#### ***Consultation question 24***

How far do you agree with our proposals for pension offsetting arrangements, namely that:

- Where offsetting arrangements are already in place when our regulations come into force, no action is taken; and
- For divorces and dissolutions taking place in the future but before the pension debit member has made a deferred choice, CETVs for remedy period service in the 2015 and legacy schemes should be calculated, and the court should use the higher of the two.

## 8. Transfers between schemes

162. When employees, including firefighters, move between employers which offer different occupational pension schemes, they generally have the option of either:

- a. preserving their pension in their old employment, so that they become deferred members of their former scheme, and joining the new employer's scheme afresh; or
- b. transferring their pension from their old employment into the new employer's scheme, if both schemes are defined benefit schemes and allow for such transfers.

163. This applies to all instances of firefighters moving employers, including moving between FRAs elsewhere in the UK (an FRA in England, the Scottish Fire and Rescue Service or the Northern Ireland Fire and Rescue Service) and a Welsh FRA, and any move between employment as a firefighter and other employment. Moves between the three Fire and Rescue Authorities (FRAs) in Wales, all of which offer the same schemes on the same terms, are though not included in this arrangement.

### Forms of transfer

164. There are several different ways in which membership can transfer from one pension scheme to another:

- a. Transfers between public sector pension schemes generally take place under the rules of the so-called public sector transfer club and are known as "club transfers". There are 2 types of club transfer :-
  - Inner Club transfers are transfers of CARE scheme benefits. Under these arrangements, the old scheme (or "sending scheme" as it is sometimes known) calculates a transfer payment which is made to the new scheme (or "receiving scheme"). The receiving scheme then calculates the transfer credit pension based on the CARE preserved pension that the member had in the sending scheme, uprated in line with the sending scheme's in service uprating methodology, and adjusted to take account of differences in scheme design. The calculations required of the schemes are based on a set of standard tables used by all Club schemes as prepared from time to time by the Government Actuary's Department. The receiving scheme then undertakes to uprate the inner Club transfer credit pension whilst the individual remains an active member of their scheme in a manner that mirrors the in-service uprating methodology of the sending scheme.
  - Outer Club transfers refer to transfers of final salary benefits between Club schemes that operate on a final salary basis – or that are able to accept final salary benefits. Under these arrangements, accrued pension and pensionable service is transferred directly from the sending scheme into the receiving scheme based on a member's final

salary at the point they leave and allowing for pension increases up to retirement. The receiving scheme works out the service credit using a set of standard tables that all Club schemes use, and uses the member's salary in the old scheme when working out the service credit, regardless of any salary increase in their new role. Because of this, the member receives like for like benefits or benefits of an equal value to those in their previous scheme. The sending scheme makes a payment to the receiving scheme to cover the value of the benefits earned, and which the sending scheme will no longer need to pay.

- b. Other transfers, including in particular those between employment in the Fire and Rescue Service and private-sector employment, take place on the basis of a cash equivalent transfer value (CETV), and are sometimes known as "non-club transfers". Under this approach, the cash-equivalent value of a member's benefits in the former scheme are calculated at the point s/he transfers, and paid over to the new scheme in the same way as for a club transfer; the receiving scheme must offer benefits of an equivalent value but they base service credit on a member's salary in their new role. Even when the two schemes are similar the result is generally a lower service credit in the receiving scheme.
- c. A bulk transfer takes place when a group of members are compulsorily transferred between public sector employers with different pension schemes. However, these have not been used in the Fire and Rescue Service in recent times and do not appear at all likely to be used in the future, so we do not propose to make any provision about them.

165. Note that there are restrictions on both club and non-club transfers. For instance, club transfers can generally only take place within 12 months of the member joining the receiving scheme. And some pension schemes do not accept transfers at all. The 1992 Scheme was, for instance, closed to all new members, including transferees from other employment, in 2006 except in the circumstances set out in paragraph 169 below.

### **Transfers before 1 October 2023**

166. As with other cases such as divorce and ill health retirement, reverting affected members to their legacy schemes means that any transfers in or out of a firefighters' scheme which took place during the remedy period, or indeed after that but before our regulations come into force on 1 October 2023, need to be revisited. At the time, these will have been calculated on the basis that remedy period service was in the 2015 Scheme. However, automatically reverting members to their legacy schemes means that such transfers must instead be recalculated as though remedy period service was in the relevant legacy scheme.

### **Past club transfers**

167. For club transfers (i.e., to or from another public sector pension scheme), we propose that this should mean adjusting the benefits transferred to reflect the retrospective reversion. This would need to be done by the "sending" scheme

manager (i.e., for the scheme which the member left) and communicated to the “receiving” scheme manager, who would in turn apply that as a transfer into the relevant legacy scheme rather than the 2015 Scheme. We do not propose, though, to require that the payment between schemes is recalculated and repaid. Transfers between public sector schemes are bi-directional and amendments to such payments will therefore tend to cancel each other out. The only exception to that is for transfers to and from the Local Government Pension Scheme (LGPS), where the payment between schemes should be adjusted in light of the amended transfer value. This is because of the fundamentally different way in which the LGPS is funded and operates. The approach to dealing with member contributions in respect of club transfers will be dealt with in amendments to the Club Memorandum in due course.

168. For those transferring in to employment as a firefighter during the remedy period, their legacy scheme is the 2007 Scheme. This is because the 1992 Scheme was closed to new members (including transferees) in 2006. However, firefighters who transfer between schemes (e.g., between Wales and England), and who have unbroken service in the 1992 Scheme, were permitted to transfer that service into their new employer’s 1992 Scheme until that Scheme closed altogether in 2022. This position will now also apply to previously unprotected members who are now entitled to 1992 scheme membership for the remedy period.
169. Two examples may help illustrate this process:
- a. Firefighter S joined the Fire and Rescue Service in 2010 and became a member of the 2007 Scheme. He was wrongly transferred into the 2015 Scheme in 2015. In 2020, he left employment as a firefighter and joined the Royal Navy, transferring his (by then) 2015 Scheme membership to the Armed Forces Pension Scheme on a club transfer basis. He will now revert retrospectively to membership of the 2007 Scheme from 2015 to 2020, and his former scheme manager should recalculate the value of the transfer on 2007 Scheme terms and communicate that to the scheme manager for his military pension, who will convert it into service in the relevant armed forces legacy scheme, to which S will also revert.
  - b. Firefighter T joined the Fire and Rescue Service in Scotland in 2005 and became a member of the 1992 Scheme. She too was wrongly transferred into the 2015 Scheme in 2015. In 2017, she moved to join a Fire and Rescue Service in Wales, and transferred her (by then) 2015 Scheme membership to the 2015 Scheme in Wales on a club transfer basis. She will now revert to membership of the 1992 Scheme, and her former scheme manager in Scotland should recalculate the value of the transfer on 1992 Scheme terms and communicate that to the Welsh scheme manager, who will convert it into service in the Welsh 1992 Scheme.
170. Note that there is no need for the transferring member to make any decisions as part of this process: it is automatic, just as it is for members who served as firefighters throughout the remedy period. Transferring members will make immediate or deferred choices in the same way as other members. They will

also make only one such choice for the whole of the remedy period (for instance, Firefighter S above would not have to make one choice as regards his service as a firefighter, and another for his service in the Navy). In order for that choice to be offered, receiving schemes will need to maintain calculations for both legacy scheme and care scheme benefits with regard to the transfer. Protected members will be given a similar choice at retirement. Sending schemes will therefore need to provide the necessary calculations for the alternative scheme and the receiving scheme will therefore need to maintain dual records for this group of members too.

### ***Consultation question 25***

How far do you agree with our proposals for club transfers during the remedy period, namely that:

- The scheme manager for the sending scheme should calculate the alternative set of benefits for unprotected members based on legacy scheme service during the remedy period, and communicate that to the scheme manager for the receiving scheme, who should convert that into service in the relevant legacy scheme;
- The scheme manager for the sending scheme should calculate the alternative CARE scheme benefits for protected members and communicate that to the receiving scheme manager so that an alternative benefit amount can be created in the receiving scheme; but
- Other than for transfers to or from the LGPS, there is no need to amend the actual payment from the sending scheme to the receiving scheme.

## **Past CETV / non-club transfers**

171. A non-club transfer generally involves a member joining a scheme outside the public sector, meaning that their post-transfer service is not covered by remedy at all; and they will not make an immediate or deferred choice because they will have no benefits in a relevant scheme to be paid. It is thus necessary to ensure that they receive the best possible outcome at the point of transfer.

172. To achieve this for past transfers, we propose that the CETV used to make the transfer should be re-examined. Scheme managers should calculate a CETV for the scheme of which the member was not a member when s/he transferred (i.e., the legacy scheme for affected members, and the 2015 Scheme for those who were protected). That should then be adjusted for the correct contributions and tax which the member should have paid. If it is higher than the CETV which was used for the actual transfer, then the scheme manager for the sending

scheme should make an additional payment to the receiving scheme to cover the difference. This, though, depends on the receiving scheme accepting such a payment; it may be that the scheme has since closed or changed its policy on accepting transfer payments. If it is not possible to make an additional transfer payment in this way, we propose that the scheme manager should instead compensate the member directly.

173. For example, Firefighter U was wrongly transferred from the 1992 Scheme to the 2015 Scheme in 2015. In 2021 he left the Service to work for XYZ plc, a private sector fire safety consultancy, and transferred his membership of the 2015 Scheme to XYZ's occupational pension scheme. The CETV calculated at the time valued his 2015 Scheme benefits at £10,000. The scheme manager recalculates that CETV on the basis of remedy period service in the 1992 Scheme instead, which gives a value of £13,000, but with a contributions deficit corrected for tax of £2,000, giving a net value of £11,000. The difference (£1,000 plus interest) is therefore paid to XYZ's scheme manager as a supplementary transfer payment. If XYZ's scheme manager cannot accept such a payment, it is paid direct to U as compensation instead.

### **Consultation question 26**

How far do you agree with our proposals for non-club / CETV transfers during the remedy period and up to 30 September 2023 namely that:

- The scheme manager for the sending scheme should recalculate the CETV based on service during the remedy period in the scheme other than the one from which the member transferred. Any contributions deficit, net of tax, should be deducted from it, and any contributions surplus, net of tax, should be added to it.
- If the result is higher than the CETV that was used at the time of transfer, the scheme manager should make a supplementary transfer payment for the difference, plus interest, to the scheme manager of the receiving scheme.
- If the receiving scheme cannot accept such a payment, it should instead be made to the member directly, as compensation.

## **Future transfers**

174. Transfers occurring in the future are more straightforward, in that all members were, at the point of transfer, members of the 2015 Scheme; and there is no need to make any retrospective corrections. However, the value of transferred benefits – whether on a club or CETV basis – will vary depending on whether the member's remedy period service was in the 2015 Scheme or the legacy scheme.



175. We propose that, where entitled members transfer in the future, the scheme manager should calculate two club transfer values or CETVs (as the case may be), based on remedy period service in the 2015 Scheme and the member's legacy scheme. The higher of the two values should then be used for the purposes of the transfer. There is no need for the member to make a choice at the point of transfer. As with members who transferred during the remedy period, members who transfer after the remedy period to another public sector scheme will decide at retirement whether they wish the transfer to remain on legacy scheme or 2015 scheme terms. The approach to dealing with member contributions in respect of club transfers will be dealt with in amendments to the Club Memorandum in due course. For members transferring to a scheme outside the public sector, such a choice would have no wider consequences (such as a liability for higher contributions, or a change in entitlement to survivor benefits), and it would be perverse not to choose the higher value.

### ***Consultation question 27***

How far do you agree with our proposals for transfers in the future, namely that:

- The scheme manager for the sending scheme should calculate two transfer values or CETVs, based on the member's remedy period service being in the 2015 Scheme and her or his legacy scheme.
- For CETVs to schemes outside the public sector, if the member has not yet made good any contributions deficit or received any contributions surplus, that should be subtracted from or added to the relevant value.
- The higher of the two values should then be used for the purposes of the transfer.

## **Revisiting remedy period transfer decisions**

176. It is possible that affected members' decisions about whether or not to transfer during the remedy period were influenced by the discrimination they experienced. Retrospectively reverting them to their legacy schemes might mean that they would have made a different decision at the time. In line with our wider approach to remedy, we propose that such members should be allowed to revisit and, if they wish, reverse those decisions. Those could include decisions to transfer in or out of a firefighters' scheme, or decisions not to do so, whether on a club or non-club basis.

177. As before, this will depend on both schemes being willing and able to make and accept a retrospective transfer, or to reverse such a transfer. If that is not the case, the member's position would remain unaltered. If s/he had wished to retrospectively transfer, but that was not possible, s/he would remain a deferred member of the sending scheme and an active member of the receiving scheme; while if s/he had wished to reverse a transfer, s/he would remain an active member of the receiving scheme only. It is not possible to pay compensation in

such cases now, as any loss could only be quantified when the member retired.

178. However, we propose that this right to revisit a transfer decision should be open to all affected members, without qualification. In particular, we do not believe they should be required to “prove” that their original decision was related to the discrimination they experienced. As with other aspects of our proposals, such as decisions to opt out, in many cases we do not think there would be any evidence either way on this matter, other than a simple assertion by the scheme member which a scheme manager could not rebut.
179. Club transfers can normally only take place within 12 months of the member joining the receiving scheme. In this case, though, we propose to allow a further window of 12 months after the transferring member receives a remediable service statement setting out their entitlements and their right to revisit a transfer decision. There may, though, be similar timing restrictions on non-club schemes accepting transfers; and our regulations can do nothing about those.
180. For example, Firefighter V was wrongly transferred from the 1992 Scheme in 2015. In 2018, she left the Fire and Rescue Service to become a teacher. At the time, she felt that the transfer value of her 2015 Scheme service was too low to be worth transferring, and also disagreed with the terms of the 2015 teachers’ scheme, which she promptly opted out of. Having now reverted retrospectively to the 1992 Scheme, her transfer value is now higher; and she also chooses to opt back in to membership of the relevant teachers’ legacy scheme. She can, if she wishes, retrospectively transfer her 1992 Scheme service into the teachers’ scheme on a club transfer basis, if the scheme manager for the latter is able to accept that.

***Consultation question 28***

How far do you agree with our proposals to allow affected members to revisit and reverse transfer decisions made during the remedy period, provided that both the sending and receiving scheme can permit a transfer to be retrospectively made or reversed?

## **9. Miscellaneous issues**

181. There are several issues, largely concerned with how scheme managers administer the remedy proposed in this consultation, on which our regulations will merely follow the requirements of the 2022 Act or of Treasury directions given under it. As such, we have no scope to vary the provisions and we are not seeking any views on them. What follows is simply an outline to aid understanding of how these issues will work, and how they interact with other aspects of the remedy.

### **Remediable service statements**

182. A remediable service statement (RSS) sets out the benefits available to an entitled member if their remedy period service were in their legacy scheme or the 2015 Scheme. In line with section 29 of the 2022 Act, an RSS must be provided annually to active members, to deferred members on request (but only once in any 12-month period), and as a “one-off statement to pensioner members”. They may be combined with the annual benefit statements which schemes are already obliged to provide. RSSs are also the means by which members can make an informed immediate or deferred choice, or can decide whether to opt back in or revisit a past transfer decision.

183. The content of an RSS will be as stipulated in section 29(5) of the 2022 Act and relevant Treasury directions. We cannot depart from those. We would, though, expect scheme managers to provide RSSs in both Welsh and English, in line with the FRA’s Welsh language standards.

### **Interest**

184. As we have mentioned at many points during this consultation, sums which a scheme manager owes to a scheme member, or vice versa, as a result of remedy will be subject to interest. This is because they relate to events which will have already happened, in some cases many years in the past, and it is only fair for their calculation now or in the future to take account of inflation.

185. Treasury directions set out the rules for calculating and applying interest in some detail. In general, though, interest on sums owed to scheme members is charged at a higher rate than interest charged on sums which scheme members owe to scheme managers.

186. In the current economic climate, interest rates are relatively high. Treasury directions are, though, framed such that if there is, for instance, a fall in the prevailing rate of interest, that will be automatically reflected in how interest is applied as part of our proposals. It would also be open to the Treasury to give new or amended directions if appropriate.

## **Making payments**

187. Many aspects of our proposals involve payments between scheme managers and scheme members in relation to the remedy period – for instance, corrections of pensions in payment, corrections of contributions, payment for opting back in to a legacy scheme, retrospective purchases of added pension. In some cases, such payments will fall due at around the same time. If so, Treasury directions allow for those payments to be netted off, so that there is only a single transaction: it would clearly be pointless for (say) a scheme member to pay a large sum of money to a scheme manager, only for the scheme manager to pay an even larger sum back to the member.
188. Where sums are netted off, interest (see above) must be applied to each relevant amount before they are netted off.
189. We do not think it is necessary to stipulate the circumstances in which payments can be netted off; we would expect scheme managers to act reasonably. As a rule of thumb, though, if all the sums involved can be accurately and finally calculated, it would probably be reasonable to net them off if doing so would not cause unfairness or undue hardship to the member (in particular, undue delay in receiving sums due to them).
190. For example, Firefighter W was wrongly transferred from the 1992 Scheme in 2015. In 2021, he was granted ill health retirement on 2015 Scheme terms, with a lower tier ill health pension of £10,000 a year. On re-examining his case, he would have been entitled to a higher-tier 1992 Scheme pension of £15,000 a year, although his retrospective membership of the 1992 Scheme also created a contributions deficit of £4,000. The arrears of pension due to W are £5,000 for each of the years from 2021 to 2023, or £15,000. That can be netted off against his contributions deficit of £4,000, and the resulting £11,000 plus interest paid to him.

## 10. Conclusion

191. We believe these proposals represent a fair and comprehensive way of redressing the age discrimination which scheme members have experienced, and one which is consistent with the terms of the 2022 Act and with the Treasury directions.

### Equalities issues

192. These proposals have been formulated to rectify and provide redress for age discrimination which has been identified by the courts. We believe that they do so, and in a way which does not have an adverse impact on people because of their age or any other protected characteristic. We have been particularly careful not to give entitlements to affected members which other scheme members do not enjoy, as that could give rise to fresh claims of age discrimination.

193. A full equality impact assessment of these proposals is attached.

#### *Consultation question 29*

We are interested in understanding whether the proposals in this consultation document will have an impact on people with protected characteristics. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation. Do you think that the proposals in this consultation will have any positive or negative impacts on people with protected characteristics? If so, which and why/why not?

### The Welsh language

194. This consultation is concerned with the operation of firefighters' pension schemes and the entitlements of members who have experienced age discrimination. As such, it does not affect the provision of services through the medium of Welsh, or the ability of people to communicate in the Welsh language. We would, though, expect scheme managers to communicate with members in both Welsh and English, in line with the Fire and Rescue Authority's Welsh language standards. Our final regulations will also be made in both Welsh and English.

### ***Consultation question 30***

We would like to know your views on the effects that the above proposals would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

### ***Consultation question 31***

Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

## **Other issues**

195. We have asked numerous specific questions as part of this consultation, but it may well be that respondents wish to raise other issues too. They are free to do so, noting only that the Welsh Ministers cannot depart from the requirements of the 2022 Act or of the directions given under it; so we cannot act on any representations we receive to that effect. We have also sought as far as possible to ensure that our proposals are broadly consistent with those being made for firefighters in other parts of the UK.

### ***Consultation question 32***

Do you have any other comments on our proposals which are not covered by the other questions in this consultation?

## Glossary

Term	Explanation
<b>1992 Scheme</b>	The Firefighters' Pension (Wales) Scheme as established by the Firemen's Pension Scheme Order 1992
<b>2007 Scheme</b>	The New Firefighters' Pension Scheme (Wales) as established by the Firefighters' Pension Scheme (Wales) Order 2007. It is sometimes (if misleadingly) known as the "New Firefighters' Pension Scheme" or "NFPS".
<b>2013 Act</b>	The Public Service Pensions Act 2013
<b>2015 Scheme</b>	The Firefighters' Pension Scheme (Wales) 2015 as established by the Firefighters' Pension Scheme (Wales) Regulations 2015.
<b>2022 Act</b>	The Public Service Pensions and Judicial Offices Act 2022
<b>Accrual rate</b>	The rate at which an <b>active member</b> builds up a pension in a given period of time. It is normally expressed as a fraction or percentage of annual <b>pensionable pay</b> , and varies from one scheme to another. As a general principle, an annual pension is calculated by multiplying annual pensionable pay (calculated on a <b>CARE</b> or <b>final salary</b> basis), <b>pensionable service</b> and the accrual rate together.
<b>Active member</b>	A member of a firefighters' pension scheme who is actively employed as a firefighter (i.e., s/he has not retired, resigned or otherwise left that employment).
<b>Actuarial reduction</b>	The reduction of a pension paid to someone who chooses to retire before reaching <b>normal pension age</b> , to reflect the longer retirement s/he will enjoy. The amount of the reduction depends on the chosen retirement age, and varies from one scheme to another. Actuarial reductions generally do not apply to those who retire on grounds of <b>ill health</b> .
<b>Added pension</b>	Extra pension benefits that a member can choose to purchase in return for extra contributions. In the <b>1992</b> and <b>2007</b> Schemes, added pension takes the form of added years of <b>pensionable service</b> in units of sixtieths of <b>pensionable pay</b> (1/60 being the <b>accrual rate</b> for those schemes). In the <b>2015 Scheme</b> it takes the form of added amounts of pension, at any value up to a maximum, that the member chooses. It is not possible directly to convert one form of added pension into the other.
<b>Affected member</b>	A scheme member who has suffered <b>age discrimination</b> , i.e., anyone who was employed as a firefighter on both 1 April 2012 and 1 April 2015, but was aged under 45, and thus too young to qualify for full <b>transitional protection</b> , on the former date. It includes <b>taper protected members</b> .

Term	Explanation
<b>Age discrimination</b>	Treating employees or any other group of people less favourably because of their age. Age discrimination is unlawful unless it can be shown to be a proportionate means of achieving a legitimate aim.
<b>Career average revalued earnings (CARE)</b>	A means of calculating pension entitlement based on a member's average annual <b>pensionable pay</b> over the course of their employment, adjusted for inflation.
<b>Cash equivalent transfer value (CETV)</b>	The accumulated and estimated value of a member's pension benefits at a given point in time. CETVs are often calculated to allow a member to <b>transfer</b> from one scheme to another, or for the purposes of allocating pension benefits as part of a divorce settlement.
<b>Club transfer</b>	A transfer of membership of one public sector pension scheme to another, under the rules of the Public Sector Transfer Club. Members transferring in this way are guaranteed the same benefits in their new scheme as they would have received in their old one.
<b>Contributions</b>	Payments into a pension scheme by either an employer or a scheme member. In both cases, the rate of contributions is a percentage of <b>pensionable pay</b> ; the rates vary between schemes but in all cases, employee contributions are banded such that higher-paid individuals pay a greater proportion of their earnings in pension contributions
<b>Contributions holiday</b>	A period during which an <b>active member</b> is not required to pay employee <b>contributions</b> . Such a holiday was available for members of the 1992 Scheme between reaching 30 years' <b>pensionable service</b> (the maximum in that scheme) and their 50 <sup>th</sup> birthday (the earliest date on which they could retire).
<b>Death grant / death lump sum</b>	A sum of money payable when an <b>active member</b> dies. In the <b>1992 Scheme</b> , it is two times <b>pensionable pay</b> at the time of death, and payable to the member's spouse or civil partner, or to the member's estate if there is no such person. In the <b>2007</b> and <b>2015 Schemes</b> , it is three times salary and payable to the member's nominee.
<b>Deferred choice underpin (DCU)</b>	The mechanism by which <b>entitled members</b> who are <b>active members</b> or <b>deferred members</b> on 1 October 2023 will decide whether their service during the <b>remedy period</b> should be treated as service in their <b>legacy scheme</b> or the <b>2015 Scheme</b> . Such a choice will be made when the member retires or when their pension benefits otherwise first fall to be paid (e.g., if they die before they retire).



Term	Explanation
<b>Deferred member</b>	A member of a firefighters' pension scheme who is no longer employed as a firefighter but who has not yet reached <b>deferred pension</b> age at which their pension benefits can be paid.
<b>Deferred pension age</b>	The age at which a <b>deferred member</b> can claim a deferred pension. This is age 60 in the <b>1992 Scheme</b> and the <b>modified scheme</b> ; 65 in the <b>2007 Scheme</b> ; and <b>state pension age</b> in the <b>2015 Scheme</b> .
<b>Double accrual</b>	A feature of the <b>1992 Scheme</b> (only) in which the <b>accrual rate</b> for each year's <b>pensionable service</b> after the first 20 years is doubled (from 1/60 of <b>pensionable pay</b> to 1/30).
<b>Eligible decision-maker</b>	A <b>survivor</b> of a deceased <b>entitled member</b> who is eligible to make a <b>deferred choice</b> or <b>immediate choice</b> on that member's behalf.
<b>Entitled member</b>	A member who is entitled to the remedy proposed in this consultation. It includes <b>affected members</b> and <b>fully protected members</b> , whether they are <b>active</b> , <b>deferred</b> or <b>retired</b> ; and where such members have died, it includes their <b>survivors</b> . It does not include <b>unaffected members</b> or <b>pension credit members</b> .
<b>Final salary</b>	A means of calculating pension entitlement based on a member's annual <b>pensionable pay</b> at the point s/he retires.
<b>Firefighter</b>	Anyone employed in firefighting by a Fire and Rescue Authority in Wales, and who is thus eligible to be a member of a firefighters' pension scheme. This includes wholetime and retained duty system firefighters and control room staff, but not those engaged in administrative and other non-firefighting work on "Green Book" terms and conditions (who are normally members of the <b>Local Government Pension Scheme</b> ). It also excludes people who are employed in firefighting by an entity other than a Fire and Rescue Authority, such as airport or military firefighters.
<b>Fully protected member</b>	A scheme member who was granted full <b>transitional protection</b> in 2015, i.e., anyone who was employed as a firefighter on both 1 April 2012 and 1 April 2015 and was aged 45 or older on the former date.
<b>Ill health retirement</b>	Retirement before reaching <b>normal pension age</b> on the grounds that a member is permanently unable for health reasons to carry out the duties of a firefighter. The level of, and criteria for, an ill health pension vary between the <b>legacy</b> and <b>2015 Schemes</b> , but always depend on the degree of incapacity that the member has suffered.
<b>Immediate choice</b>	The mechanism by which <b>entitled members</b> who are <b>retired members</b> on 1 October 2023 (or <b>survivors</b> of entitled members who died before that date) will decide

Term	Explanation
	whether their service during the <b>remedy period</b> should be treated as service in their <b>legacy scheme</b> or the <b>2015 Scheme</b> . Such a choice will be made as soon as possible after 1 October 2023.
<b>Independent qualified medical practitioner (IQMP)</b>	A clinician, normally a doctor specialising in occupational health, who provides advice to a <b>scheme manager</b> on <b>ill health retirement</b> cases.
<b>Legacy scheme</b>	The scheme of which an <b>affected</b> or <b>fully protected member</b> was a member immediately before 1 April 2015 – i.e., the <b>1992 Scheme</b> or the <b>2007 Scheme</b> .
<b>Local Government Pension Scheme (LGPS)</b>	A pension scheme for local government workers, as well as for employees of Fire and Rescue Authorities who are not <b>firefighters</b> . Unlike all other public sector schemes, <b>contributions</b> into the LGPS are invested, and pension benefits are paid from the returns on those investments.
<b>Modified scheme</b>	A pension scheme specifically for retained duty system (“on call”) firefighters who began employment before 1 April 2006. It is included in the <b>2007 Scheme</b> rules but resembles the <b>1992 Scheme</b> in most respects.
<b>Non-club transfer</b>	A transfer between schemes which is not a <b>club transfer</b> , for instance one between a public and private sector scheme. Non-club transfers take place on a <b>CETV</b> basis, and the member has no guarantee that s/he will receive the same benefits in the new scheme for their pre-transfer service.
<b>Normal pension age (NPA)</b>	The age at which an active member can retire on a full pension. It is stipulated in scheme rules and can vary from one scheme to another. For instance, the <b>1992 Scheme</b> has an NPA of 55 but the <b>2007 and 2015 Schemes</b> have an NPA of 60.
<b>Opted out member</b>	A firefighter who has chosen not to be a member of one of the firefighters’ pension schemes, for instance if s/he wishes to have a personal pension from a private-sector provider instead.
<b>Pension credit member</b>	A former spouse or civil partner of a scheme member who is entitled to a portion of that member’s pension entitlements, under a divorce or dissolution settlement.
<b>Pension debit member</b>	A scheme member who is the former spouse or civil partner of a <b>pension credit member</b> , some of whose pension benefits are payable to the pension credit member instead, under a divorce or dissolution settlement.

Term	Explanation
<b>Pensionable pay</b>	The amount of pay which is taken into account in calculating pension entitlements. Generally, it includes individuals' regular salary and any allowances they receive on a permanent or indefinite basis, but not short-term payments such as overtime or temporary allowances.
<b>Pensionable service</b>	The length of time (normally expressed in years) over which a scheme member accrues pension. It is generally the same as her or his length of employment, including authorised non-working periods such as maternity leave, although in the <b>1992</b> and <b>2007 Schemes</b> it is possible to purchase extra years' service as a form of <b>added pension</b> .
<b>Prospective regulations</b>	The Firefighters' Pension Scheme (Wales) (Amendment) Regulations 2022, which transferred all remaining <b>active members</b> of the <b>1992</b> and <b>2007 Schemes</b> to the <b>2015 Scheme</b> with effect from 1 April 2022.
<b>Receiving scheme</b>	In a <b>transfer</b> , the pension scheme which the member joins, having taken up different employment from that associated with the <b>sending scheme</b> .
<b>Remediable service statement (RSS)</b>	A statement prepared by a <b>scheme manager</b> for a member setting out the benefits to which s/he would be entitled if <b>remedy period</b> service were in the <b>2015 Scheme</b> or the relevant <b>legacy scheme</b> .
<b>Remedy period</b>	The period to which the remedy for <b>age discrimination</b> will apply: 1 April 2015 to 31 March 2022, inclusive.
<b>Remediable service</b>	<b>Pensionable service</b> as a <b>firefighter</b> during the <b>remedy period</b> .
<b>Retired member</b>	A scheme member who has retired and is receiving pension benefits.
<b>Sending scheme</b>	In a <b>transfer</b> , the pension scheme which the member leaves to take up employment elsewhere, and membership of the <b>receiving scheme</b> .
<b>Scheme manager</b>	The person responsible for managing pension schemes for a group of members. In the case of firefighters, the scheme manager is the Fire and Rescue Authority which employs them.
<b><u>Sargeant</u></b>	The court case of <u>Sargeant and others v London Fire Commissioner and others</u> , which established that age-based <b>transitional protection</b> amounted to unlawful <b>age discrimination</b> .
<b>State pension age</b>	The age at which someone becomes entitled to receive a state ("old age") pension. It varies according to the year of birth, but for most people not already in receipt of such a pension it is now 67. The state pension age is also the age

Term	Explanation
	at which a <b>deferred member</b> of the <b>2015 scheme</b> can claim a deferred pension.
<b>Survivor</b>	A relative of a scheme member – normally a spouse, partner or child – who is entitled to receive scheme benefits after the member dies.
<b>Taper protected member</b>	A scheme member who was offered tapered <b>transitional protection</b> in 2015, i.e., the right to join the 2015 Scheme on a phased basis. This applies to anyone who was employed as a firefighter on both 1 April 2012 and 1 April 2015 and was aged between 41 and 44 on the former date. Taper protected members are also <b>affected members</b> .
<b>Transfer</b>	A move between one pension scheme and another. This is often as a result of a change in employer and/or employment type. It typically requires either the calculation of a <b>CETV</b> or the use of a <b>transfer club</b> mechanism. It can also result from the closure of a scheme and the movement of its members to a new scheme, as under the <b>prospective regulations</b> .
<b>Transfer club</b>	An arrangement under which an <b>active member</b> can <b>transfer</b> between membership of different pension schemes by transferring their accrued pension in the old scheme directly into the new one, and with no loss of continuity of <b>pensionable service</b> . Such arrangements exist between most public sector pension schemes in the UK.
<b>Transitional protection</b>	The right to remain as a member of a <b>legacy scheme</b> in 2015. The courts have held that granting this right on the basis of age was unlawful.
<b>Unaffected member</b>	A scheme member who started employment as a firefighter on or after 1 April 2012, or who left on or before 31 March 2015, and who is not affected by the proposed reforms nor entitled to the remedy proposed in this consultation.
<b>Underpin</b>	A provision in scheme rules which provides a member a choice between two or more possible sets of scheme benefits. See also <b>deferred choice underpin (DCU)</b> .