



Llywodraeth Cymru  
Welsh Government

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Welsh Government  
Consultation – Summary of responses

# Consultation Response to Remediating Age Discrimination in Firefighters' Pensions in Wales 2023

September 2023

Maeir 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**

This document provides a summary of the responses to our consultation 'Remedying Age Discrimination in Firefighters' Pensions in Wales 2023', including the Welsh Government's response to them.

## **Action Required**

This document is for information only.

## **Further information and related documents**

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

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## **Additional copies**

This summary of response and copies of all the consultation documentation are published in electronic form only and can be accessed on the Welsh Government's website.

Link to the consultation documentation: [Amendments to firefighters' pension schemes in Wales 2023](#)

## Contents

INTRODUCTION.....	4
CONSULTATION PROCESS.....	5
SUMMARY OF CONSULTATION RESPONSES.....	6
SCHEME MEMBERSHIP .....	6
CONTRIBUTIONS.....	7
CHOICE MECHANISMS .....	10
SURVIVORS AND SURVIVOR BENEFITS .....	17
ADDED PENSION BENEFITS .....	21
DIVORCE AND DISSOLUTION .....	24
TRANSFERS BETWEEN SCHEMES .....	27
MISCELLANEOUS ISSUES.....	30
NEXT STEPS.....	34
ANNEX 1 – LIST OF RESPONDENTS .....	35

## INTRODUCTION

1. The Welsh Government's consultation on "Remedying Age Discrimination in Firefighters' Pensions in Wales 2023" was published on 31 March. It dealt with the implementation of retrospective age discrimination remedy in firefighter pension schemes in line with the requirements set out in the Public Service Pensions and Judicial Offices Act 2022 (the 2022 Act). The remedy is being introduced as a result of successful legal challenges in the cases of McCloud and others v Lord Chancellor and another, and Sargeant and others v London Fire Commissioner and others. In these cases, the courts found that age-based transitional protection introduced in public sector pensions schemes in 2015, which allowed only those closest to retirement to stay in their legacy schemes, was discriminatory against younger members.

2. The remedy consists of two key aspects:-

- Eligible members who were moved to the new firefighters' pension scheme in 2015 (or later if they had tapered protection) will be moved back into their legacy pension scheme for the period during which the discrimination occurred – between 1 April 2015 and 31 March 2022. The consultation proposals also dealt with the consequences of that.
- All affected members will be able to choose, at retirement (or immediately, if they have already retired), the pension scheme benefits that they wish to apply for the relevant period (either their legacy or 2015 scheme benefits).

3. The consultation proposals dealt with matters relating to :

- **Scheme Membership** – identifying those entitled to remedy, including the treatment of members with multiple contracts and the option to opt back into the scheme for the remedy period.
- **Contributions** – correcting the amount of contributions for remedy period service, and the amount of tax relief on them resulting from retrospective reversion to legacy schemes, and a deferred or immediate choice for 2015 Scheme remedy period service.
- **Choice Mechanisms** – providing a choice for all affected members between remedy period service in their legacy scheme or the 2015 Scheme.
- **Ill Health Retirement (IHR)** – reconsidering IHR of affected members during the remedy period to assess whether the criteria in the alternative scheme would have been met.
- **Survivors and survivor benefits** – providing entitlement for eligible survivors of deceased scheme members to make deferred or immediate choice elections in the same way as the deceased member would have done.

- **Added pension benefits** – providing compensation for voluntary contributions made, and remedial arrangements to pay voluntary contributions into legacy schemes.
- **Divorce and dissolution** – determining the benefits payable to pension credit and pension debit members.
- **Transfers** – correcting transfers of remediable amounts in and out of the schemes.

## CONSULTATION PROCESS

4. A twelve-week consultation began on 31 March 2023 and was open for responses until 23 June 2023. The consultation contained 32 questions, with options to respond to those questions by completion of an online form or by e-mail. The [consultation document](#) was available on the Welsh Government website.

5. The consultation, which included a draft statutory instrument, specifically focussed on:

- placing all members back into their legacy schemes for the period 2015 to 2022;
- offering members a choice of legacy scheme or 2015 scheme benefits for their remedy period service, in line with the 2022 Act.

6. The Welsh Government received 18 responses to the consultation. Those 18 responses came from the following:

- Three from Fire and Rescue Authorities in Wales (FRAs)
- Three from other trade unions and other organisations representing firefighters
- One from the Firefighters Pension Scheme Advisory Board for Wales<sup>1</sup>
- One from Heywood Pension Technologies
- Ten from individuals

7. A full list of respondents is available at Annex A.

8. The Welsh Government welcomes the responses to the consultation and would like to thank those who responded.

9. The Welsh Government published its Integrated Impact Assessment alongside the consultation document. The overall policy position set out in the consultation document remains the same and has formed the basis of the final regulations. Therefore, no changes have been made to the Integrated Impact Assessment as originally published. The document can be found [here](#).

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<sup>1</sup> The Firefighters Pension Scheme Advisory Board for Wales has an independent Chair and consists of 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.

## SUMMARY OF CONSULTATION RESPONSES

10. The Welsh Government has considered the responses to the consultation. This document provides a summary of the responses received to each of the specific questions and the Welsh Government's response to them.

### SCHEME MEMBERSHIP

**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?**

11. 16 out of the 18 respondents agreed the proposed approach to allow entitled members who have multiple employment contracts during the remedy period with the same employer, to be covered by the remedy in respect of all of those contracts.

12. Two respondents did not provide a view.

#### **Welsh Government Response:**

13. The Welsh Government acknowledges the general support for the proposal. We will therefore proceed to implement the proposals in the consultation document.

**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?**

14. 16 out of the 18 respondents to this question agreed that all affected members who opted out during the remedy period should be entitled to opt back in to their legacy scheme retrospectively without evidencing their reasons for opting out in the first place.

15. Several respondents raised the issue of members who opted out of the scheme between 1 April 2012 and 31 March 2015, either seeking clarity on whether those members are able to opt back into the scheme for the remedy period or proposing that such members should be able to opt back in to the scheme for service from 1 April 2012 and not just service from 1 April 2015 onwards.

16. One respondent asked for clarity on whether a member who opted out during the remedy period and then later opted back in prior to 1 April 2022 would be eligible under the Welsh Governments proposals. Another respondent asked for clarity on the retirement age that will apply to members who opt back in to their legacy schemes as part of remedy.

## **Welsh Government Response:**

17. Given the overwhelming support for our proposal that all affected members who opted out of the 2015 scheme should be entitled to opt back in to their legacy scheme for the remedy period (from 1 April 2015 to 31 March 2022), we plan to continue with this policy. The 2022 Act does not allow members to opt back in retrospectively for any period outside of the remedy period.

18. To clarify, our intention is that any firefighter who meets the eligibility criteria in section 1 of the 2022 Act will be entitled to opt-in to the relevant legacy scheme for the remedy period (or for such part of the remedy period that they opted out). Our regulations make provision about some of the procedures that must be followed to make an opt-in election, for instance that an election must be made in writing and must be within 12 months of the date of receiving a remedial service statement. However, whilst the 2022 Act provides for scheme regulations to include certain conditions under which an application may be refused, the Welsh Government have not included any such conditions in the scheme regulations.

19. Retrospectively opting back in makes no difference to retirement age (or normal pension age, to be more precise). Members of the 1992 Scheme (including those who opt back into it retrospectively) had a normal pension age of 55 while in that scheme. However, the normal pension age for all serving firefighters is now 60, as required by the 2015 Scheme.

20. We will therefore proceed to implement the proposals in the consultation document.

## **CONTRIBUTIONS**

### **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?**

21. 13 respondents agreed that scheme managers should be required to repay surpluses in contributions as a single lump sum. One of these respondents made a specific reference to the impact the proposal may have on fire service budgets. One of these respondents added that the adjustment should be made at the point a member retires from the scheme, due to the possibility of the member choosing reformed scheme benefits which would result in no surplus being owed.

22. One individual disagreed with the approach, but they appeared to have misunderstood the question, believing that it referred to members having to repay contributions.

23. Four respondents did not provide a view.

## **Welsh Government Response:**

24. The Welsh Government notes the concern to the impact the proposal may have on FRA budgets. We do not provide core funding to FRAs (for pension costs or otherwise). Firefighters' pensions are funded by employer and employee contributions, plus a top-up grant from the Treasury. Any adjustments required will be made through pension accounts and shortfalls in annual funding will be met by the Treasury via Annually Managed Expenditure. Resultant adjustments to employer contributions will be included in future valuations.

25. We note the suggestion that the adjustment should be made at the point a member retires but the 2022 Act does not allow for this. The Welsh Government cannot take any action to address the suggestion.

26. We will therefore proceed to implement the proposals in the consultation document.

### **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?**

27. 15 out of 18 respondents actively agreed with our proposal that scheme members should be allowed to pay a contributions deficit as a lump sum or in instalments over a period of up to 10 years. Several members noted that the proposed approach was consistent with the approach taken for the payment of contributions by special members of the 2007 scheme (the modified scheme), although one respondent commented that periodic payments, particularly by direct debit from deferred members, add an extra layer of complexity to the process.

28. One respondent felt that members should not incur interest on any contributions deficit.

29. Three respondents noted that the proposed approach was different from proposals in England and Northern Ireland. One of these respondents raised concerns that not allowing a full contributions deficit to be paid from a member's lump sum at retirement would put barriers in the way of members electing 1992 scheme benefits. Two sought clarity on how this difference in approach would impact on transfers between scheme, noting that the difference could complicate record-keeping and reporting requirements.

30. One respondent said that operating the same rectification solution across all firefighter schemes was important where possible to reduce further software and calculation complications. The same respondent referred to the importance of FRAs creating a contribution adjustment record for each member, the need for the timely delivery of a Government Actuary's Department (GAD) contributions adjustment calculator that could interface in bulk into administration systems.



31. One respondent asked whether there was scheme manager discretion to require payment via periodic contributions to be made in less than 10 years where for instance the amount owed by the members was very small when spread over this period of time.

**Welsh Government Response:**

32. The majority of respondents agree with the overall approach set out in our consultation for the repayment of contributions and as such we plan to implement them as proposed. We acknowledge the concern raised that not allowing a full contributions deficit to be paid from a member's lump sum at retirement could put barriers in the way of members electing 1992 scheme benefits; however, we do not believe this is the case. Our approach is consistent with the approach taken in respect of purchase of membership in the modified scheme. It is, we believe, the approach to paying contributions that is the most consistent with the position of unaffected members and protected members, who do not, and never have had, the option of trading lower contributions for a lower lump sum. On balance, therefore, we believe that our original proposals best meet the needs of members reverting to the legacy schemes whilst not introducing further discrimination against other members of the pension schemes.

33. We note respondents' comments about the differences in approach across the UK adding to software complications and the need for clarity on issues such as transfers. One respondent indicated the importance of a contributions adjustment record for each affected members and we agree this is an important administrative tool that can be used consistently by all FRAs. The scheme rules for each country will apply to contributions owed with regard to transfers between firefighter schemes as they will between other public sector schemes and firefighter schemes and a contributions adjustment record will provide important information for transfers between services in Wales, between Welsh services and services elsewhere in the UK, and with other public sector organisations, as well as being used as an internal record. However, this is an administrative approach and we do not believe that it needs to be legislated for. This is one of several areas where we would instead expect, for instance, the Local Government Association to support the production of consistent tools and templates.

34. On the issue of repayment by instalments, scheme regulations provide for the terms of an arrangement to repay in instalments to be agreed between the scheme manager and the individual member. The only stipulation is that agreement should not exceed ten years.

35. HM Treasury has set out how interest must be applied to sums owed to and by scheme members in Directions under the 2022 Act. The Welsh Ministers are obliged to comply with those directions.

36. We will therefore proceed to implement the proposals in the consultation document.

**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?**

37. 14 respondents agreed with our proposal to allow scheme members entitled to a refund to waive it, to avoid having to repay it on retirement. One of these respondents reiterated their previous suggestion that any adjustment of contributions should only be made at the point of election of benefits. One of these respondents suggested that it would be helpful to have consistency in approach across all three FRAs to ensure accurate record keeping. One of these respondents highlighted an inconsistency between our consultation document and the draft regulations regarding the timing of such a request.

38. Four respondents did not provide a view.

**Welsh Government Response:**

39. We note the respondents' views and agree it is sensible that the three FRAs apply a consistent approach when maintaining individuals' employment records. However, we consider this to be an administrative issue and not one that should be reflected in the regulations.

40. We note the error identified in respect of the timeframe for requesting that a refund in contributions be waived until retirement, and will correct that in the final version of the regulations to reflect that a member has up to 12 months to make that request.

41. Subject to the above, we will proceed to implement the proposals in the consultation document.

**CHOICE MECHANISMS**

**Question 6 – How far do you agree with our proposals that immediate choice elections must be made in writing, and will be irrevocable?**

42. 15 out of 18 respondents agreed that immediate choice elections should be made in writing. 11 respondents also specified that they agreed that a decision should be irrevocable, although two respondents (both representing firefighters) raised concerns about a member's decision being irrevocable, one commenting that a member should be able to change their decision if that decision was based on incorrect information provided by the FRA, and another commenting that a member should be able to revoke a decision until it is acted upon and benefits come into payment.

**Welsh Government Response**

43. We note respondents' overall agreement to our proposals. We also note respondents' concerns regarding the irrevocability of a member's immediate choice.

However, this requirement is mandated by the 2022 Act and Welsh Ministers therefore have no powers to change the position.

44. We will therefore proceed to implement the proposals in the consultation document.

**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?**

45. 12 out of 18 respondents agreed with the proposals. Two disagreed but did not set out their reasons. The remaining four respondents either did not comment at all or did not indicate whether they agreed or not.

46. Some respondents noted that members could only make a deferred choice election if they had received the relevant and accurate information required to make a choice, and one respondent highlighted the importance of templates used by all scheme managers to ensure consistency of information and messaging across all services and to all members.

47. Several respondents felt that there needed to be clearer deadlines for member choices to ensure adequate timeframes for administration and pensions to be put into payment, and also to set a cancellation date for the revocation of member elections to prevent decisions being revoked when the administrative process for putting the pension into payment is already underway.

**Welsh Government Response**

48. The Welsh Government agrees that consistent information and messaging across services is vital. We agree that it would be useful for FRAs to work collectively to produce appropriate templates that include both data and key messaging to members to support their decision makers processes. Our proposals clearly need to work in practice and therefore we are sympathetic to the issues that have been raised regarding clarity on timeframes for member choices and timescales for administrative processes. We have therefore amended the scheme regulations to include such deadlines and flexibilities for scheme managers. These include that a deferred choice decision is required within 3 months of the issue of a Remediable Service Statement (RSS), or the day before pension would become payable if earlier, or at a date that the scheme manager considers reasonable.

49. The regulations already include a cancellation deadline in respect of a member revoking their deferred choice decision, that is two weeks before the day on which the first payment is made, or such later time before payment day that the scheme manager considers reasonable.

50. Subject to the above, we will proceed to implement the proposals in the consultation document.

**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?**

51. 17 out of the 18 respondents appeared to agree with our proposals, although some offered further comments. One respondent believed that the proposal was reflective of the principle of the 2022 Act, to provide a choice of retirement under both the legacy and reformed schemes.

52. One respondent made reference to the interaction between the regulations and section 61 of the Equality Act 2010 and suggested that the approach to process immediate choice cases, taken by some FRAs, should be adopted by *all* FRAs. One respondent referred to the administrative impact the proposal would have as calculations would need to be revisited. One respondent did not provide a view.

**Welsh Government Response:**

53. We note respondents' overall agreement to our proposals.

54. We note the respondents' views on the approach taken by FRAs on immediate detriment cases. However, that is a matter for the scheme managers, not for the Welsh Government or these regulations.

55. We note the respondents' views on resource implications, but it is important that FRAs provide accurate information to members so that they can make an informed decision, on receipt of their RSS, about whether to elect for remedy period service in the 2015 Scheme or their legacy scheme.

56. We will therefore proceed to implement the proposals in the consultation document.

**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?**

57. 15 of the 18 respondents agreed with our proposal. Responses from both employer and employee representatives acknowledged that providing members flexibility to make separate immediate or deferred choices in respect of each contract was reasonable.

58. One respondent disagreed with our proposal but did not provide an explanation. Two respondents did not provide a view.

#### **Welsh Government Response:**

59. The Welsh Government acknowledges the general support for the proposal. We will therefore proceed to implement the proposals in the consultation document.

#### **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?**

60. 12 of the 18 respondents agreed with our proposal, some pointing out that it was not appropriate for scheme managers to be put in a position of making a choice on a member's behalf. Three further respondents made no comment at all. Two respondents though suggested that a backstop position should be included for scheme managers to make a decision on behalf of a member, or survivor of a deceased member where it was clear that alternative scheme rather than default scheme benefits were more beneficial, and where the lack of a decision could be attributed to the scheme manager not being able to contact the relevant member or eligible decision maker. Examples of where the default scheme might not be the most beneficial scheme were provided.

61. One respondent pointed out that every effort should be made to encourage members and their dependents to make a positive election.

#### **Welsh Government response**

62. The Welsh Government firstly acknowledges that the question posed in the consultation is somewhat misleading. The proposed default position for members (but not their survivors : see below) should an election not be made is the legacy scheme. However, to be consistent with our proposals for survivors at Chapter 5 of the consultation, the default position for survivors should an election by the eligible decision maker not be made is the 2015 scheme. That is for the reasons described in Chapter 5 where we use the principle that the 2015 scheme provides for a broader and more inclusive approach to survivor entitlements. This is reflected in the regulations.

63. We appreciate that there may be a limited number of situations where the default position is not, on the face of it, the most beneficial to a member or their survivor. However, choices about the most favourable benefits for an individual may have other implications such as owed contributions, different survivor benefits, and other effects on an individual's personal and financial situation. We therefore firmly believe that it would not be reasonable to expect a scheme manager to take such a decision. Scheme managers should instead make every endeavour to contact the relevant individual, provide them with all of the relevant information that they need to make a decision, including describing the implications of them not doing so, so as to encourage an appropriate response.

64. If, despite such efforts, a member could not be contacted, then the default position would apply. There is no reason to treat these cases any differently from those where a member is contacted but does not make a decision.

65. We will therefore proceed to implement the proposals in the consultation document.

**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?**

66. All respondents who replied to this question supported the proposals in the consultation document, although some made further comments.

67. One respondent queried whether the cost of further referrals to an independent qualified medical practitioner (IQMP) would be met by employers or by the Welsh Government.

68. One respondent queried how the proposals and draft regulations interacted with section 61 of the Equality Act 2010, which incorporates into all public and private-sector pension schemes a “non-discrimination rule”, requiring scheme managers to exercise their functions in ways which do not discriminate on the basis of a protected characteristic. The respondent also highlighted the need for employers to process so-called “immediate detriment” cases (i.e., of people who already have a right to retire as members of their legacy scheme, whether on grounds of ill health or otherwise) in reliance on section 61 and asked that the consultation response clarified the Welsh Government’s position on this.

69. Several respondents highlighted potential errors and omissions in the draft regulations which were attached to the consultation.

**Welsh Government Response:**

70. Costs of referral to an IQMP are costs of employing the staff who are referred. They fall to be met by employers in all circumstances; the Welsh Government does not provide any funding for the costs of employing firefighters.

71. Section 61 of the Equality Act 2010 affects all pension schemes and, where necessary, overrides scheme rules. While our proposals on IHR (and more generally) aim to correct unlawful discrimination, there is no need for the regulations on IHR to “recognise” or “incorporate” the terms of section 61 expressly; they simply need to be consistent with the principle that scheme managers must not discriminate. We believe that they are.

72. We recognise that the courts have ruled that section 61 does provide a basis for employing FRAs to process “immediate detriment” cases in advance of scheme

rules being changed as those scheme rules should be read as including the “non-discrimination rule”. However, that is a matter for the employers, not for the Welsh Government or these regulations.

73. We are most grateful to respondents who highlighted possible errors and omissions in the draft regulations. We will make appropriate corrections to the final version.

74. Subject to the above, we will proceed to implement the proposals in the consultation document.

**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?**

75. 14 of the 16 respondents who answered this question supported the proposals in the consultation document, although some made further comments.

76. Two of the respondents did not agree, believing that cases where members were denied IHR and continued in employment should be re-examined, presumably with a view to offering some form of retrospective or prospective IHR now.

77. Two respondents agreed with the proposals but noted that complications could arise for members who remained in employment but on reduced or nil pay (because of extended sickness absence).

**Welsh Government Response:**

78. In general, we do not believe it is right that scheme members who continued in employment having been denied IHR should now have some right to retire on grounds of ill health if they would have met the less stringent IHR criteria in the 1992 Scheme. Firstly, that cannot be a retrospective right, as the members concerned will probably have continued to earn salary, pay pension contributions, and been subject to all of the other terms and conditions of employment, in the interim. That cannot sensibly be reversed. Secondly, we do not think it makes sense to offer such individuals IHR now, either. They are necessarily fit for work, and it would be perverse (and quite possibly not in their or their employers’ interests) to retire them on grounds of ill health. It would also be inconsistent with the important principle that IHR is driven by medical advice; it is not a matter of choice for employer or employee.

79. We recognise, though, that cases where an individual was denied IHR and continued in employment but received reduced or nil pay because of long-term sickness absence, are more complex. Such individuals could benefit from having their cases re-examined, and IHR could possibly be granted retrospectively without some of the complications noted above.

80. We believe that resolving this depends on how each case was actually concluded. If such an individual was dismissed on grounds of incapacity or poor

attendance, then her or his case would fall to be re-examined under the proposals we set out in the consultation document (see question 13 below).

81. If, on the other hand, s/he remained employed on reduced or nil pay at the end of the remedy period, then any subsequent IHR would fall to be dealt with under the rules of the 2015 Scheme – which, as we noted in the consultation document, are generally less beneficial than the 1992 Scheme. In that case, it could well be appropriate for the employer to compensate the individual for the difference between the 2015 Scheme pension received and the 1992 Scheme pension which would have been received had IHR been granted at the time of the original consideration. Scheme managers already have the power to do this under section 23 of the 2022 Act, and there is no need to provide for it in our draft regulations.

82. Subject to the above, we will proceed to implement the proposals in the consultation document.

**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?**

83. All 15 respondents who answered this question supported the proposals in the consultation document.

84. Two respondents pointed out that our draft regulations do not appear to make provision for cases such as these, as they are limited to members who actually became entitled to IHR during the remedy period, thus excluding those for whom IHR was considered but rejected.

85. One respondent queried whether an immediate choice between a 1992 Scheme ill health pension and a deferred 2015 Scheme pension could be offered, as the former would normally be put into payment automatically.

**Welsh Government Response:**

86. We agree that our draft regulations did not adequately cover these cases. The final version will do so, and we are most grateful to the respondents who highlighted this omission.

87. The regulations will provide that anyone whose legacy scheme is the 1992 Scheme who was considered for IHR and referred to an IQMP will have their case reconsidered against 1992 Scheme criteria if (a) the IQMP determined that IHR was not justified; and (b) the member was dismissed (or resigned) within three months of that determination. Beyond that point, we believe it is fair to treat them as though they continued in employment (see question 12 above).



88. There is no problem with the choice between a 1992 Scheme ill health pension and a deferred 2015 Scheme pension which the consultation document described. It is important to note that *all* members entitled to remedy (or their survivors) will make an immediate or deferred choice, regardless of when they retire or on what grounds.

89. Subject to the above, we will proceed to implement the proposals in the consultation document.

## **SURVIVORS AND SURVIVOR BENEFITS**

**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**

90. Of the 15 respondents who answered this question, two disagreed with the proposals in the consultation document but did not give any reasons for doing so. The remainder agreed, although some offered further comments.

91. One respondent suggested that scheme members should inform scheme managers of the identity of the eligible decision-maker; one suggested that scheme managers should have discretion to determine the identity of the eligible decision-maker in difficult cases; and one suggested that, for deaths occurring during the remedy period, the eligible decision-maker should be determined in accordance with the rules of the scheme of which the deceased was a member at the time of death.

### **Welsh Government Response:**

92. We set out in the consultation document why we think the 2015 Scheme should be the basis for identifying the eligible decision-maker. This is because it treats cohabiting partners on equal terms with spouses and civil partners and is thus more likely to yield an outcome which fairly reflects the domestic circumstances of the deceased. We are not minded to change that position, for instance to provide that the eligible decision-maker for a member who died during the remedy period and who is now to be retrospectively reverted to the 1992 Scheme should be determined using the 1992 Scheme rules. That could mean denying benefits to the partner of the deceased, which s/he might reasonably have expected to receive.

93. The reason for taking this approach is to identify an eligible decision-maker automatically in each case, and to avoid scheme managers having to make sensitive decisions about the deceased’s preferences and domestic circumstances: matters about which they could have no knowledge. Accordingly, we do not see the case for giving scheme managers powers to become involved in this process.

94. We agree that it would be sensible for scheme members to inform scheme managers of the likely identity of the eligible decision-maker, especially if this is a spouse, civil partner or cohabiting partner of whom the scheme manager might not otherwise be aware. Doing so would save time and the need for intrusive inquiries during the difficult time after the death of the member. However, this cannot be a process of nominating any person that the scheme member chose: the eligible decision-maker would normally be someone likely to receive survivor benefits themselves, and that should not be varied by a scheme member decision. Nor do we think it is necessary to require such notifications, as that could unfairly deny survivors any benefits at all if no notification were made. Rather, we would advise scheme managers to collect this information from scheme members voluntarily. FRAs would normally record details of firefighters' next of kin, to allow for notifications in case of injuries at work and so on, and this process would be similar.

95. Subject to the above, we will proceed to implement the proposals in the consultation document.

**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.**

96. Of the 16 respondents who answered this question, 14 supported the proposals in the consultation document. Two did not agree, although one of those gave no reasons for doing so.

97. No respondents raised any substantive objections to the proposal that a choice made by a scheme member before death should not be capable of being overturned by a survivor.

98. One respondent believed that, where an eligible decision-maker did not make a decision, the scheme manager should have discretion to determine whether remedy period service was in the 2015 Scheme or legacy scheme, and should choose the option which yielded the higher pension. Another respondent, while supporting the proposal overall, believed that such discretion should exist to deal with circumstances where defaulting to the 2015 Scheme would be “demonstrably detrimental” to beneficiaries.

99. One respondent identified an inconsistency in our draft regulations between whether the default scheme was the 2015 or legacy scheme.

**Welsh Government Response:**

100. We do not support scheme managers having any power to make discretionary decisions on behalf of members or their survivors. They cannot know what a

deceased member would have preferred, or which choice would be best for them. As with decisions made by scheme members themselves, we believe it is simplistic to reduce choices to a comparison of annual pension entitlements. That is mainly because a higher pension (such as the 1992 Scheme will generally yield) will also usually create a liability for a substantial contributions deficit. A scheme manager cannot reasonably be expected to know whether a member or their survivor might prefer, or be better off with, a higher pension and a contributions liability to repay, or a lower pension with no such liability. Therefore, we believe the default position should be the same in all cases, and that survivors should be told that if they do not make a decision, then the 2015 Scheme will apply.

101. Furthermore, in the case of survivor benefits for members who died during the remedy period, the decision about which scheme applies will (in cases where the deceased had a cohabiting partner) also be a decision about who is to receive survivor benefits. We believe that having to make such a decision would place scheme managers in an impossible position.

102. We are most grateful to the respondent who identified the inconsistency in our draft regulations. The final regulations will indicate that where an eligible decision maker is not agreed, or where a decision for death benefits is not made within the relevant timeframes, the scheme manager becomes the decision maker and the scheme manager will be required to elect 2015 scheme benefits.

103. Subject to the above, we will proceed to implement the proposals in the consultation document.

**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.**

104. Of the 15 respondents who responded to this question, 12 supported the proposals in the consultation document. Three did not agree, although two of them gave no reasons for doing so.

105. One respondent believed that overpayments should not be recovered because they arose from age discrimination, and that they should be retained as a form of compensation for that discrimination.

**Welsh Government Response:**

106. The overall aim of the remedy is to put members (and, in this case, their survivors) in the position that they would have been in if the wrongful transfer in 2015 (or later for taper members) had not happened. In some circumstances, that will create liabilities for members – including historic contributions deficits and overpayments of pension.

107. Simply writing off these deficits would not be fair on members who are not entitled to remedy (such as those who joined the Service after 31 March 2012). It would mean that affected members or their survivors would, in effect, be getting the same pension benefits as unaffected members, but at a lower cost, or better pension benefits at the same cost. That could give rise to fresh claims of age discrimination by those who are not entitled to remedy.

108. However, it has been pointed out to us that section 15(10) of the 2022 Act provides that liability for a contributions deficit in respect of a deceased member rests with the deceased's personal representative (executor or administrator of the deceased's estate), not with any survivor. Effectively, any deficit is a debt that must be charged to the deceased's estate. There is therefore no need for us to provide that the eligible decision-maker or anyone else entitled to survivor benefits should be liable for such a deficit.

109. Furthermore, financial compensation for the injury to feelings arising from age discrimination has of course been sought by the many claimants in the Sargeant case as part of their legal action. It would plainly be wrong to compensate them again by waiving liabilities that they or their survivors owe.

110. This, though, gives rise to a problem in relation to scheme members entitled to remedy who died before these regulations come into force. In such cases, it is quite possible that the deceased's assets have already been distributed to beneficiaries in accordance with her or his will. That would make it impossible to recover a contributions deficit except from the deceased's executor or administrator directly. That would be most unjust, especially if that person was not entitled to any survivor benefits themselves. There is a risk that they could potentially become personally liable for what could be a substantial debt through no fault of their own.

111. Accordingly, we will include in the regulations a discretionary power for scheme managers to waive contributions liabilities that would fall to be recovered from the deceased's personal representative. We would expect that discretion to be used especially where the estate had already been distributed, and the personal representative was not an eligible survivor.

112. Subject to the above, we will therefore proceed to implement the proposals in the consultation document.

**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.**

113. Of the 14 respondents who answered this question, 13 agreed with the proposals in the consultation document.

114. One respondent repeated the point made in answer to question 16, namely that overpayments should not be recovered at all.

**Welsh Government Response:**

115. For the reasons set out in our response to question 16, we do not agree that it would be fair or appropriate to waive liabilities owed by those entitled to remedy.

116. We will therefore proceed to implement the proposals in the consultation document.

**ADDED PENSION BENEFITS**

**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.**

117. 11 of the 18 respondents agreed with our proposals, one respondent was unsure and four respondents made no comment.

118. Two respondents felt that, instead of a member receiving a refund of added pension in the 2015 scheme, they should be given the option of it remaining in the 2015 scheme. One of those respondents felt that this should be done with an adjustment made so that the contributions were linked to post April 2022 membership rather than added pension during the remedy period, the other respondent believed though that actuarial factors applied should be those applicable at the time when the member chose to start making the additional contributions. This respondent also indicated that as contributions required to purchase added pension are age-related, a member should not have to pay more to purchase added pension in the reformed scheme after the remedy period following receipt of compensation for added pension purchased during the remedy period. It was also noted that the added pension a member is entitled to purchase in the reformed scheme is capped.

119. Other issues raised were :-

- Consideration should be given to whether Additional Pension Benefits (APBs) could be utilised as an alternative to compensation.

- One respondent indicated that it is not possible to pay for added pension after retirement and that refunding contributions and requiring a member to pay back pension already in payment defeats the member's purpose in purchasing the pension in the first place. Another respondent pointed out that the draft regulations did not appear to include provision for our proposal for an immediate choice member to retain their 2015 added pension until they make their immediate choice election, and only receive a refund if they do not choose 2015 scheme benefits.
- It was expected that there would be a GAD calculator given that the policy was for scheme managers to consult the scheme actuary to determine the amount of compensation.

### **Welsh Government Response:**

120. We note the two responses proposing that members should be able to choose to retain their added pension in the 2015 scheme rather than accept a refund of contributions, but that views on how this might work vary with one respondent indicating that this would need to be on post remedy terms and another on pre-remedy terms that applied at the time a member's added pension was originally purchased. On the latter proposal, we do not believe that this approach would be fair or equitable. The basic principle of remedy is that affected members are, as far as possible, put into the position they would have been in had age discrimination not taken place and that is why all members are rolled back into the legacy scheme for the remedy period. Legacy scheme members would never have been able to purchase 2015 added pension during the remedy period and allowing them to carry forward added years purchased on remedy period terms would put them in a more advantageous position than protected members. We would risk age discrimination in a different form if we were to make such provision. We firmly believe that our proposals to allow for the retrospective purchase of legacy scheme added years is the fairest and most equitable approach. In respect of the former proposal, we can see that this may work in administrative terms, but we believe it is important to keep decisions regarding remedy period service and post remedy service completely distinct from each other.

121. The Welsh Government did consider whether APBs in the legacy schemes could be used as an alternative to a contributions refund when developing our policy proposals. We discounted it because again we do not believe that this would be correct or fair. APBs were introduced to deal with aspects of non-regular pensionable pay. Voluntary pension contributions do not fit into this definition, and we are concerned that such an approach, which was not available to protected members who may have missed Additional Voluntary Contributions deadlines or reached the maximum levels of added years allowed for in scheme rules, would introduce inequality between the protected and unprotected groups of members.

122. We accept that members who have already retired and are receiving their pension should be able to keep their added pension benefits. That is why, in our consultation document, we indicated that provision would be made for an immediate choice member to retain their 2015 added pension if they make their immediate choice election for 2015 scheme benefits. We have now made provision for that in our regulations.

123. Subject to the above, we will proceed to implement the proposals in the consultation document.

**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.**

124. 13 of the 18 respondents agreed with our proposals, three were unsure or made no comments. Three respondents referred to rules in legacy schemes, including for instance age related factors, and eligibility related to “date of joining” that will need to be considered. One of these respondents indicated that the actuarial factors used to calculate added years purchased should be the factors in force when the added years contract would have commenced or been continued. One respondent indicated that survivors should also be able to purchase added years if the deceased member would have been eligible to do so. Clarification was sought on whether the time periods referenced in Regulations 33(3)(c)(i) 33(4)(c)(i) both ran from the date of the initial RSS.

**Welsh Government Response**

125. We agree that members who elect to retrospectively purchase legacy scheme added pension during the remedy period should be able to do so under the terms that would have been available at the time. That is the only way of ensuring that all affected members are treated equally and is reflected in the regulations. We also agree that the costs of purchasing added years should be the costs that would have applied at the time that such a purchase would have been made during the remedial service period. As with the arrangements for all owed contributions more generally, all such contributions will be subject to interest and tax adjustments. This is reflected in the regulations. The regulations do not provide for survivors to retrospectively purchase added years because the 2022 Act specifies that deceased members may not be included in these provisions. We agree that our draft regulations were not clear that both time periods specified in the regulations for applying for, and entering into a remedial agreement to purchase added years, related to the date of the issue of the members first remediable service statement. This has now been clarified in the final regulations. For clarification, if a member purchases retrospective added years in the legacy scheme and subsequently make a deferred choice for 2015 scheme benefits then they will be paid compensation for their legacy scheme contributions.

126. Subject to the above, we will proceed to implement the proposals in the consultation document.

## **DIVORCE AND DISSOLUTION**

**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**

127. 14 of the 18 respondents agreed with our proposal, some pointing out that the pension credit member should not be disadvantaged by a choice made by a pension debit member. One respondent though provided an example of a scenario where a pension credit member may be detrimentally impacted by virtue of them being 'non decision makers' and referred to the provisions regarding 'non eligible decision makers'. The respondent further provided detail on the management process for Cash Equivalent Transfer Value (CETV) requests and highlighted concerns around costs and timings for providing a second CETV to members.

128. Four respondents made no comment at all.

### **Welsh Government Response:**

129. We note respondents' overall agreement to our proposals.

130. We note the concern of one respondent regarding pension attachment orders which are already in force. In most cases where the pension is already in payment, the former spouse or civil partner will not be affected. Where the scheme member opts for a lower pension, meaning that in principle overpayments have been made to the former spouse or civil partner, the overpayments will be written off but future payment may reduce. Alternatively, the former spouse or civil partner may be entitled to a top-up payment if the pension member had been in the alternative scheme at the time. In some rarer cases, the former spouse or civil partner's entitlement may also be reduced, if the pension member had tapered protection, and their remediable service for the whole remedy period in (a) the legacy scheme and (b) the new scheme), would be lower than what it was based on their mixed service. In these circumstances any overpayment will not be written off.

131. We note the respondents concern regarding the costs and timings of CETVs for divorces and dissolutions taking place in the future but before the pension debit member has made a choice. These are however administrative issues and not a matter for the scheme regulations.



**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.**

132. 14 of the 18 respondents agreed that our proposals for pension sharing orders already in place on 1 October 2023 are in line with the general principles of remedy. One of these respondents reiterated their previous concern regarding costs and timings for providing a second CETV to members.

133. Four respondents did not provide a view.

**Welsh Government Response:**

134. The Welsh Government acknowledges the general support, and we will therefore proceed to implement the proposals in the consultation document.

135. We note the respondents concern regarding the costs and timings of CETVs for divorces and dissolutions taking place in the future but before the pension debit member has made a choice. These are however administrative issues and not a matter for the scheme regulations.

**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?**

136. Eight of the 18 respondents believed the pension credit member should be offered a choice, with one respondent pointing out that this option would avoid any unintended consequences of detrimental impact on the pension credit member.

137. Three respondents favoured the automatic application of the higher CETV, with two respondents highlighting that the pension credit member had not been subject to the discrimination identified by the Court and therefore they did not feel it reasonable to provide these members with a choice.

138. Four respondents did not provide a view. Three respondents did not explain which proposal they favoured.

**Welsh Government Response:**

139. The Welsh Government welcomes respondents’ views on this issue. To clarify the position, under our proposals the higher CETV will automatically be

applied, and pension credit members who have pension credits in both a legacy scheme and 2015 will be able to choose which scheme any resultant additional amount will be credited to. For pension credit members whose corresponding pension debit member was a taper protected member) 2 credits will be calculated for legacy scheme and 2015 scheme benefits covering the entirety of the remedy period and, as for other pension credit members, the higher amount will be applied. In some circumstances the higher of those two calculations might be less than the mixed CETV for the remedy period but will nevertheless need to be applied. This is the same approach that is being taken for all taper protected members.

140. Subject to the above, we will proceed to implement the proposals in the consultation document.

**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.**

141. 14 of the 18 respondents agreed with our proposals for pension sharing orders that are made on or after 1 October 2023. One respondent noted that the approach was fully reflective of the principle of returning the member to the position that they would have been in if they had remained in their legacy scheme until April 2022. One respondent added that the proposals appeared fair and reasonable. One respondent noted though that the proposed approach was different to proposals in England and raised concern about the complication, administrative burden and cost implications this may cause.

142. Four respondents did not provide a view.

#### **Welsh Government Response:**

143. We note respondents' comments about the difference in approach across the UK. As a result, we have amended our policy position. For future pension sharing orders the scheme manager will calculate two CETV values based on legacy and 2015 scheme and provide the one with the highest value to the court. This revised position is reflected in the regulations. Depending on the member's choice, for active and deferred members the pension debit may need to be adjusted at retirement.

144. In relation to retired members who enter into a divorce or dissolution after making an immediate or deferred choice we will proceed to implement the proposals in the consultation document.

**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**

145. 14 of the 18 respondents agreed with our proposals for pension offsetting arrangements. One respondent pointed out that it would be difficult to revisit offsetting arrangements previously agreed, particularly as the Service does not hold information on the former spouse or civil partner. A further respondent set out the complications surrounding divorce and dissolution and suggested that these may be cases where compensation is considered. Four respondents did not provide a view.

#### **Welsh Government Response:**

146. The Welsh Government notes that views were generally supportive, and we will therefore proceed to implement the proposals in the consultation document.

## **TRANSFERS BETWEEN SCHEMES**

**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.**

147. 13 respondents agreed with our proposals. A further five made no comment or had no particular views on our proposals. One respondent did not fully support the rationale for not requiring payments between schemes to be amended (other than to or from the LGPS). A number of respondents raised issues relating to the practical administration processes for transfers including how details of contributions paid or outstanding should be shared between schemes and on the accounting treatment of transfers where no additional payments in or out were made. Advice was sought on the expected timeframes for amendments to the Club Memorandum.

**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.**

148. 13 of the 18 respondents agreed with our proposals for non-club/CETV transfers during the remedy period. A further four respondents did not provide any comments and one respondent was unsure but did not provide any further details.

149. One respondent acknowledged that the methodology should link to the tax changes that HMRC were consulting on, another noted that members may have been given a new opportunity to transfer benefits on a non-Club basis when they transitioned into the 2015 scheme, and such CETVs received during the remedy period would need to be dealt with. A further respondent noted that the consultation paper did not deal with the question of transfers which would have been paid to the member's legacy scheme if they had not been put into the 2015 Scheme.

**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.**

150. 13 respondents agreed with our proposals. The remaining five respondents either did not provide a response or had no strong views on the question.

**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?**

151. 14 respondents agreed with the proposals. One respondent raised administrative complexities, the need for close engagement between the scheme

manager and scheme administrator, and some concerns regarding GADs ability to resource requests from FRAs across the UK.

152. The remaining respondents did not provide any comments.

### **Welsh Government Combined Response to Questions 25, 26, 27, and 28 :**

153. We note that the majority of respondents supported our overall approach to recalculating and sharing transfer amounts on alternative scheme terms and benefits so that members can be given a choice of transfer benefits at retirement. There was overall support too for our proposals for compensation to be provided where a receiving scheme could not accept a “top up” transfer.

154. We did not ask a specific question about the merits of roll-back of transfers as part of the overall rollback of membership to legacy schemes for the remedy period although our consultation document did suggest that was part of our policy approach. However we have had time to reflect on that position during the consultation period. We note that our proposed approach differed from that proposed by the Home Office, which proposes excluding 2015 scheme transfers from roll back and instead keeping a record of the transfer using section 18(8) of the 2022 Act, as well as a record of alternative scheme benefits from the receiving scheme, until the member makes a choice at retirement. We note that there may be some additional complexities with this method but have also acknowledged when considering our approach that the need for consistency across the firefighter schemes is particularly important in respect of transfers. Our consultation did not include the specific draft regulations for transfer. These have now been included in our regulations and mirror the final regulations for England and the draft regulations for Scotland. Where a transfer that has been accepted into the reformed scheme would not have been accepted by the legacy scheme either partly or in its entirety then the transfer may be allocated to the reformed scheme (if the member has reformed scheme membership from 1 April 2022), or the member may be paid compensation up to the legacy scheme equivalent value.

155. We note the rationale for not requiring payments between schemes (other than LGPS) to be revisited was not fully supported. However this is the overall approach that has been agreed across the public sector schemes and it would not be practical or possible for the firefighter schemes in Wales to sit outside these arrangements.

156. With regard to the question of how CETV “transfers in” will be managed, for transfers from another public service pension scheme, the receiving scheme will calculate benefits under the alternative scheme rules (based on the alternative scheme value provided by the sending scheme) in anticipation of the member choice process. The consultation document sets out that for transfers in from the private sector there will be no change to the CETV as these transfers are not part of remedy.

157. On administration and guidance issues actuarial guidance will be available. Detailed administration issues are matters for scheme managers although we agree that where our regulations prevent the effective management of transfers

particularly between the firefighter scheme across the UK, then we will seek to work with the other administrations to resolve any issues. We hope that our alignment with the firefighter regulations in the other administrations will prevent any such problems.

158. The Public Sector Club Memorandum is owned and managed by Cabinet Office. We are aware that the Club Memorandum is currently being reviewed and a draft version has been shared with scheme managers and administrators. The Club Memorandum is however not part of this consultation.

159. Subject to the above, we will proceed to implement the proposals in the consultation document.

## **MISCELLANEOUS ISSUES**

**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?**

160. Several respondents agreed that consideration had been given to those with protected characteristics, although some offered further comments.

161. One respondent reiterated their views on the handling of immediate detriment cases. Another respondent referred to cases where an individual who was denied IHR and continued in employment, may feel that their detriment had not been fully assessed. The respondent added that further consideration be given to our proposals for the recovery of money from eligible decision makers to avoid financial detriment on those individuals.

162. One respondent felt that the proposals would have an impact on age. Another respondent felt that the proposals may have an impact on marriage and civil partnerships.

163. One respondent highlighted potential challenges surrounding the difference in approaches between the UK and devolved schemes.

164. The remaining 10 respondents either did not comment at all or were not sure whether the proposals would have any positive or negative impact on people with protected characteristics.

### **Welsh Government Response:**

165. We note respondents' views on the handling of immediate detriment and IHR cases. The Welsh Government believes that resolving cases where an individual

was denied IHR and continued in employment will depend on how each case was concluded. See response to questions 12 and 13 above.

166. On the issue of eligible decision makers, we believe that any overpayment made to the eligible decision-maker her or himself should be recovered, as it is a natural consequence of the eligible decision-maker's own decision. Our proposals provide the eligible decision-maker with a choice to repay any monies owed by them, either as a lump sum or as periodic deductions from pension payments, as the eligible decision-maker prefers.

167. We note the respondent's view on the impact our proposals may have on age. The basic principle of remedy is that affected members are, as far as possible, put into the position they would have been in had age discrimination not taken place. 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.

168. We do not believe our proposals have any particular differential impact based on marital status. While they include provisions for divorces and dissolutions, these simply allow existing processes for allocating pension benefits between parties to accommodate the remedy we propose.

169. We acknowledge the respondent's view on the differences in approach across the UK and the challenges this may present. We have reconsidered our position for some cases, such as transfers, to align with the approach taken across the UK. This will be reflected in the final version of the regulations. However, responsibility for certain aspects of firefighters' pensions is devolved to the Welsh Ministers, and consistency with other parts of the UK is not an end in itself. So on issues such as entitlements to opt back in or repayment of contributions, we will proceed to implement the proposals as set out in the consultation document because we believe they are fairer for scheme members.

170. Subject to the above, we will proceed to implement the proposals in the consultation document.

**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?**

171. No specific comments were made other than recognition that documents will be made available in both English and Welsh, in accordance with Welsh Language Standards.

172. Eight respondents did not provide a view.

### **Welsh Government Response:**

173. The Welsh Government notes that Fire and Rescue Authorities will continue to communicate with their members in both Welsh and English, in line with their Welsh language standards. Our final regulations will also be made available in both Welsh and English.

174. We will therefore proceed to implement the proposals in the consultation document.

**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.**

175. No specific comments were made in respect of the effect the policy may have on the Welsh Language, other than those already raised under Question 30.

176. Eight respondents did not provide a view.

### **Welsh Government Response:**

177. There are no issues to be addressed. We will therefore proceed to implement the proposals in the consultation document.

**Question 32 – Do you have any other comments on our proposals which are not covered by the other questions in this consultation?**

178. We received numerous and diverse responses to this question, as follows:

- Several consultees believed that scheme managers would need guidance to implement the remedy as set out in the regulations.
- Two consultees believed the regulations should go into more detail about the circumstances in which affected members should receive compensation, or in which contingent decisions which they made (that is, decisions which reflected the discrimination they had experienced) should be reversed.
- Two consultees believed that changes were needed to the arrangements for remediable service statements (RSSs): that they should be combined with annual benefit statements that all members already receive; that they should be provided to deferred members on the same basis as active ones; and that they should set out the tax consequences for those who choose to abate their pensions on partial retirement.
- One consultee believed that the regulations should replicate the definition of those entitled to remedy in section 1 of the 2022 Act.



- One consultee noted that the work involved in implementing the remedy would be extensive and complex, and sought Welsh Government funding for this.
- One consultee asked how this remedy would interact with that being proposed for retained firefighters with service before June 2000 (who are to be entitled to purchase that as pensionable service, retrospectively in relation to a separate remediation exercise).
- One consultee questioned whether scheme managers could allow members to opt back in to scheme membership for periods before the remedy period; and another noted that there was no provision for members who opt back in to pay the necessary contributions in instalments.
- One consultee noted a lack of progress in HMRC developing a calculator for the tax implications of the remedy.

### **Welsh Government response**

179. Our responses to these issues are as follows:

- We agree that it would be useful for scheme managers to receive guidance and would expect the Local Government Association to have a pivotal role in providing that. The Welsh Ministers have no formal powers to give statutory guidance to scheme managers, but we will continue to work with them to support implementation of the remedy.
- We do not think it would be helpful to stipulate in detail the circumstances in which compensation should be payable, or contingent decisions should be reversed. The provisions in the 2022 Act and HM Treasury Directions are deliberately flexible to deal with the wide range of possible circumstances that individual scheme members encountered. Any attempt to define those circumstances could inadvertently exclude others.
- It is already possible to combine remediable service statements with annual benefit statements, for those members who are entitled to both. But the entitlements of deferred members to RSSs (no more than annually, on request) are set out in section 28(8) and (9) of the 2022 Act and cannot be overridden by scheme rules.
- The definition of those entitled to remedy in section 1 of the 2022 Act applies directly to all public sector pension schemes. There would be no point in repeating it in our scheme rules; indeed, we have no power to make such provision in those rules.
- We agree that implementing the remedy will be complex and resource-intensive and will continue to work with scheme managers in that where we can. But there is no case for additional Welsh Government funding here. As set out earlier in this document we do not provide core funding to FRAs (for pension costs or otherwise). Firefighters' pensions are funded by employer and employee contributions, plus a top-up grant from the Treasury. Any adjustments required will be made through pension accounts and shortfalls in annual funding will be met by the Treasury via Annually Managed

Expenditure. Resultant adjustments to employer contributions will be included in future valuations. FRAs will need to take into account the costs of administering the schemes in their budget discussions with their constituent local authorities.

- We are currently consulting on changes to scheme rules to allow retained firefighters to purchase pensionable service before July 2000. Without prejudicing the outcome of that consultation, it does not affect entitlement to remedy under these proposals. Current or former retained firefighters who decide now to purchase service during the remedy period will be treated as though they were retrospectively opting back in to legacy scheme membership.
- Retrospectively opting back in to legacy scheme membership for periods prior to the remedy period is not permitted by section 5 of the 2022 Act. The regulations already provide for repayment of opted in service contributions over 10 years. This is covered by the broad provisions for contribution repayment.
- Matters relating to taxation and to calculating tax due as a result of remedy are for HM Revenue and Customs, not for the Welsh Government or these regulations.
- Subject to the above, we will proceed to implement the proposals in our consultation document.

## **NEXT STEPS**

180. The Welsh Government would like to thank all those that responded to the consultation. The Welsh Government will now move ahead with making and laying The Firefighters' Pensions (Remediable Service) (Wales) Regulations 2023 to come into force on 1 October 2023. The regulations will include the amendments that are reflected in the Welsh Government's responses in the paragraphs above.

## **ANNEX 1 – LIST OF RESPONDENTS**

- Fire and Rescue Services Association
- Fire Brigades Union
- Fire Brigades Union (North Wales Region)
- Firefighters' Pension Scheme Advisory Board for Wales
- Heywood Pension Technologies
- Mid and West Wales Fire and Rescue Service
- North Wales Fire and Rescue Service
- South Wales Fire and Rescue Service
- 10 Individual Responses