# Northern Ireland Civil Service Pension Scheme:

# Prospective Remedy

Consultation Response on a draft Statutory Rule covering the move to alpha from 1 April 2022

Response produced by Department of Finance

**This response is published on 16 March 2022**

# Contents

# Executive Summary

**1.1.** In April 2015, the Coalition Government and devolved administrations introduced reformed (defined benefit) public service pension schemes. The changes followed a fundamental structural review of public service pensions by the Independent Public Service Pension Commission, chaired by Lord Hutton of Furness. As part of these changes, protection was afforded to certain members of the existing public service schemes which allowed them to remain in their existing pension schemes and not transfer to the new reformed schemes (referred to as 'transitional protection'). Members eligible for this protection were either (a) within ten years of their normal pension age as at 31 March 2012 (known as 'full protection members') or (b) within ten years and thirteen years and six months of their normal pension age and could elect to remain in their existing scheme for a particular period of time after that scheme closed as a result of the reforms (known as 'tapered protection members').

**1.2.** In December 2018, the Court of Appeal found that transitional protection unlawfully discriminated against younger members of the judicial and firefighters' pension schemes in particular, as transitional protection was only offered to older scheme members. It also indirectly discriminated against women and ethnic minorities. The Courts required that this unlawful discrimination be remedied by the Government. Rulings of the Court of Appeal in England and Wales are not directly binding here. However, the devolved public service schemes in Northern Ireland incorporate the same transitional protection arrangements as the schemes in Great Britain and the implications of the Appeal Court decision are such that all schemes must be treated as affected and so require to be remedied.

**1.3.** In order to remedy the discrimination, HM Treasury held an open consultation to consider the potential options to remove the discrimination. Following the close of the consultation in October 2020, and publication of the consultation response in February 2021, the Public Service Pensions and Judicial Offices Bill (PSPJO) was published in July 2021.

**1.4.** The Department of Finance undertook a separate consultation in relation to the devolved public service pension schemes in Northern Ireland, which closed on 18 November 2020 and the response was published on 25 February 2021. A Legislative Consent Motion (LCM) to extend the provisions of the Bill to public service schemes here was debated in the Assembly on 1 November 2021 and was passed. The PSPJO Bill received Royal Assent on 10 March 2022 to enact it into law as "The Public Service Pensions and Judicial Offices Act 2022" ("PSPJO Act").

**1.5.** The scheme manager for the Northern Ireland Civil Service (defined benefit) pension schemes is required to implement the scheme-level changes mandated by the Act. This consultation addressed the changes being made to implement the '**prospective remedy**', which involves moving all remaining active members (including partially retired members in active service) to the reformed scheme, 'alpha', from 1 April 2022. The legacy scheme (i.e. the Principal Civil Service Pension Scheme (Northern Ireland), "PCSPS(NI)") will be closed to future accrual from 31 March 2022. This ends the discrimination identified in the McCloud litigation from 1 April 2022 onwards. Remedial service for the remedy period of 1 April 2015 to 31 March 2022 will be addressed in the "**retrospective remedy**" which is currently under policy development and will be the subject of further consultation in due course.

# Introduction and contact details

This document is the post-consultation report for the consultation '*Northern Ireland Civil Service Pension Scheme: Prospective Remedy*' which began on 20 December 2021 and ended on 25 February 2022.

It will cover:

- the background to the report
- a summary of the responses to the report
- a detailed response to the specific questions raised in the report
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting the address below:

Prospective Remedy Consultation

CSP Policy, Legislation & Communications Branch
Department of Finance
Waterside House
75 Duke Street
Derry/Londonderry
BT47 6FP
Email: PLCconsultations@finance-ni.gov.uk

Alternative format versions of this publication can be requested from: PLCconsultations@finance-ni.gov.uk.

## Complaints or comments

If you have any complaints or comments about the consultation process you should contact Department of Finance at the above address.

# Background

**2.1** The consultation addressed the changes being made to implement the 'prospective remedy', which involves moving all remaining active members (including partially retired members in active service) to the reformed scheme for civil servants, 'alpha', from 1 April 2022. The legacy scheme (i.e. the Principal Civil Service Pension Scheme (Northern Ireland), "PCSPS(NI)") will be closed to future service accrual from 31 March 2022.

**2.2** In addition several miscellaneous technical amendments were included in the consultation.

**2.3** The consultation paper 'Northern Ireland Civil Service Pension Scheme: Prospective Remedy: A draft Statutory Rule covering the move to alpha from 1 April 2022' was published on 20 December 2021. It invited comments from Northern Ireland Civil Service scheme members who are impacted by being moved to alpha from 1 April 2022 and from other interested parties and representatives.

**2.4** The consultation was aimed at members currently in the civil service legacy pension scheme (PCSPS(NI)) who will be moving to the reformed scheme (alpha) from 1 April 2022 as a result of the prospective remedy. It was also aimed at persons who would have been afforded transitional protection on re-joining the civil service pension scheme arrangements, such as those transferring in from a New Fair Deal employer, but as a result of the prospective remedy, will now join alpha from 1 April 2022.

**2.5** These amendment regulations apply to the Northern Ireland Civil Service Pension Schemes. HM Treasury has published a policy impact assessment and an equality impact assessment, which considered the impact of the proposed PSPJO Bill powers and requirements. The scope of the Section 75 policy screening assessments carried out by the Department of Finance therefore focused on the impact of the proposed changes to scheme rules necessary to deliver these requirements. The Department of Finance Section 75 policy screening assessment was published on 20 December 2021 alongside the consultation document. This assessment will be revisited at the next consultation on the remedy work.

**2.6** The prospective remedy consultation closed on 25 February 2022 and this report summarises the responses, including how the consultation process influenced the final policy proposals consulted upon.

**2.7** A list of respondents is at **Annex A**.

# Consultation

**3.1.** Between 20 December 2021 and 25 February 2022 the Department of Finance sought views on the following proposals to amend the scheme regulations:

**3.1.1.** To make the amendments required to implement the prospective remedy, which requires moving all active members of the PCSPS(NI) (including partial retirees in active service) to alpha on 1 April 2022 and making consequential changes to the regulations, pursuant to the requirements of the PSPJO Bill.

**3.1.2.** To amend Schedule 2 (transitional provisions) of the Public Service (Civil Servants and Others) Pensions Regulations (Northern Ireland) 2014 to end any future service accrual in the PCSPS(NI) from 1 April 2022 for all classes of member in respect of pensionable service under civil service pension terms. This means that from 1 April 2022, all members of the civil service pension arrangements will only be able to build up benefits in alpha and concurrently the PCSPS(NI) will be closed, meaning no further benefits will accrue in the PCSPS(NI).

**3.1.3.** Remove the restriction on members purchasing alpha added pension by lump sum in the first 12 months of alpha service for members with service in the PCSPS(NI).

**3.1.4.** Provide that members who apply for ill-health retirement under PCSPS(NI) before 1 April 2022, where the application is determined in their favour after that date, will not be placed in a less generous position than if their application had been approved on 31 March 2022.

**3.2.** The consultation document posed the following 5 Questions:

**3.2.1.** **Question 1**: please comment on whether the draft regulations are sufficient for the purposes of implementing the prospective remedy?

**3.2.2.** **Question 2**: the ill-health retirement amendment reflects the unique position of the group being moved to alpha and will ensure that a member who applies for ill-health retirement before 31 March 2022, and where the application is successful, is treated no less favourably than if the application had been determined on that date. Do you have any views on this proposal, in particular, whether there are any adverse impacts about which you are concerned?

**3.2.3.** **Question 3**: are there any other areas which you think should be addressed in these regulations in order to ensure that all members are successfully moved to alpha from 1 April 2022?

**3.2.4.** **Question 4**: Are there any further considerations and evidence that you think Department of Finance should take into account when assessing any equality issues arising as a result of the proposed amendments? Any comments should be made after reading the accompanying Section 75 Equality Screening document.

3.2.5. **Question 5**: Do you agree that the amendments referenced in [3.1] are correct and are you aware of any adverse impacts on members or the scheme that will result from them?

## Stakeholder Engagement

3.3. During the consultation period, the Department of Finance wrote to current members of the legacy PCSPS(NI) scheme, to notify them of the closure of the scheme for service beyond 31 March 2022, and their transition to alpha for future service accrual from 1 April 2022. In addition, the Department issued Employee Pension Notices about the prospective remedy consultation and an update to scheme members on information and resources available in relation to the McCloud 2015 Remedy. Scheme members were also directed to the CSP(NI) website which contains a wide range of information, including a Fact or Fiction page to help resolve some of the uncertainties and reassure, particularly current members of the PCSPS(NI) who are due to move to alpha on 1 April 2022, on what the changes mean. Frequently Asked Questions were also provided for this cohort of members. All legacy scheme members were invited to a live information session on 4 March 2022, where they received an update on the reforms, information on the alpha pension scheme and how it compared to the legacy arrangements, and officials answered questions submitted in advance of the event.

3.4. A presentation on the McCloud 2015 Remedy was delivered to the main Northern Ireland Civil Service Trade Unions on 22 October 2021. Further engagement with Civil Service Trade Unions about the consultation on the prospective remedy and wider remedy work took place at a meeting on 27 January 2022. These sessions gave unions the opportunity to seek clarification on any of the aspects presented in the proposals.

3.5. The Consultation on the Proposed Remedy was published on the Department of Finance Civil Service Pensions (NI) website, with an Employer and Employee Pension Notice issued to alert informing employers and employees of the consultation. An Employer and Employee Pension Notice was also issued prior to the consultations closure, reminding readers of the consultation and closing date.

3.6. Stakeholder engagement will remain important as the Department of Finance continues to develop and implement the final policy. The Department will continue to engage with member representatives, employer representatives and other relevant stakeholders to support the successful implementation of the pension changes set out in this response.

# Summary of responses

**4.1** As part of the consultation, consultees were asked to respond to a total of five questions. Responses to each question were considered in making decisions about how to take the proposals forward, and in the drafting of this response. Some elements of the prospective remedy policy, in particular the closure of legacy schemes, had previously been consulted on by the Department of Finance's Public Service Pensions

**4.2** Responses to the consultation were received by email and presented in different formats. Some emails answered all questions, some a few of the questions and some answered none of the questions asked in the consultation document. Whilst some responses did not necessarily address the specific questions posed in the consultation document, all responses have been considered appropriately.

**4.3** The Department of Finance received **24 responses** in total from scheme members and other stakeholders which addressed one or more of the questions raised in the consultation. These consisted of 19 responses from individuals, and 5 responses from other bodies, being NIPSA, the Alliance Party, FDA, Community Trade Union and the NICS Scheme Advisory Board. The 24 responses include one response was received after the date the consultation closed but it was accepted due to the reasons given.

**4.4** Thirteen of the twenty-four responses received did not directly provide a response to any of the questions posed in the consultation but made general comments. Also, some of the responses received contained comments and views on matters that fell outside the scope of this consultation on the proposed scheme regulation amendments for the prospective remedy, such as contribution rates. Some comments were appropriate for a previous consultation by the Department of Finance entitled "Public service pension schemes: changes to the transitional arrangements to the 2015 schemes" which closed on 18 November 2020 and the Department's response to this consultation published on 25 February 2021.

**4.5** Other comments were received in relation to the 2016 Scheme Valuation and inclusion of McCloud Remedy costs as member costs in the Scheme Cost Control calculations. The relevant consultation in relation to this was the Public Service Pensions (Valuations & Employer Cost Cap) (Amendment) Directions (NI) 2021 consultation which closed on 14 June 2021 and the associated Department of Finance's response to consultation was published on 22 November 2021. Furthermore, some responses commented on aspects or elements of the pension schemes which fall outside the scope of this consultation but will be relevant for the "retrospective remedy" phase and have been noted accordingly. The "retrospective remedy" will implement the Deferred Choice Underpin for members.

**4.6** In addition, 28 responses from individual scheme members sought guidance around their specific circumstances, questioning how the remedy would impact them directly, rather than responding to the questions posed by the consultation. These emails were redirected to Civil Service Pensions Operations Branch (the scheme administrator) for a response and are not included as formal responses to the consultation. The queries received will however help inform the Q&A sections on the Civil Service Pensions (NI) website.

**4.7** The Department of Finance undertook quantitative and qualitative analysis of the 24 responses, and the common themes and views are summarised within this document. While trade unions and other representative bodies represent a large portion of civil service workers, the Department of Finance recognises that the number of responses received (particularly from individuals) does not accurately represent all civil service pension scheme members.

**4.8** Therefore, any quantitative data has its limitations and has been handled with caution during the decision-making process. Where we have supplied data in this document, it is to simplify and summarise responses and provide the reader with a sense of trends. The Department of Finance did not treat respondents' answers in a binary way (agree or disagree) when forming its final policies.

**4.9** The number of responses received in respect of each consultation question are set out in Table 1 immediately below.

**Table 1: summary of number and nature of responses by question**

| Question | No. of responses | What was the nature of the responses? |
|---|---|---|
| **1.)** Please comment on whether the draft regulations are sufficient for the purposes of implementing the prospective remedy? | **9** | **2** – noted/agreed regulations were sufficient;<br><br>**7** – raised some concerns or made suggestions. |
| **2.)** The ill-health retirement amendment reflects the unique position of the group being moved to alpha and will ensure that a member who applies for ill-health retirement before 31 March 2022, and where the application is successful, is treated no less favourably than if the application had been determined on that date. Do you have any views on this proposal, in particular, whether there are any adverse impacts about which you are concerned? | **8** | **5** – welcomed/supported or agreed to the ill-health underpin but made some suggestions;<br><br>**3** – raised concerns or queries. |
| **3.)** Are there any other areas which you think should be addressed in these regulations in order to ensure that all members are successfully moved to alpha from 1 April 2022? | **10** | **10** – raised various matters as detailed in the further analysis section. |
| **4.)** Are there any further considerations and evidence that you think Department of Finance should take into account when assessing any equality issues arising as a result of the proposed amendments? Any comments should be made after reading the accompanying Section 75 Equality Screening document. | **8** | **2 –** responded no further equality considerations are required**;**<br><br>**6** – raised potential equality considerations. |
| **5.)** Do you agree that the amendments referenced in [3.1] are correct and are you aware of any adverse impacts on members or the scheme that will result from them? | **9** | **5** – agreed with the amendments;<br><br>**4** – raised queries/sought clarification. |

**4.10** Further analysis of the consultation responses by question, including where alternative proposals were suggested, is in the next section below. The five questions listed above have been grouped into two areas, as per the consultation: the closure of PCSPS(NI) legacy scheme and move to alpha (questions 1-4); and technical amendments (question 5).

# Further analysis of consultation responses and Department of Finance responses

## Proposal: prospective changes to remove discrimination (questions 1-4)

### Core prospective remedy (question 1)

**5.1.** Making the amendments required to implement the prospective remedy, which requires moving all active members of the PCSPS(NI) (including partial retirees in active service) to alpha on 1 April 2022 and making consequential changes to the regulations, pursuant to the requirements of the PSPJO Bill, since enacted as the Public Service Pensions and Judicial Offices Act 2022 (“the PSPJO Act”).

**5.2.** The draft regulations amend Schedule 2 (transitional provisions) of the Public Service (Civil Servants and Others) Pensions Regulations (Northern Ireland) 2014 by not allowing any future service accrual in the PCSPS(NI) from 1 April 2022 for all classes of member, in respect of pensionable service under civil service pension terms. This means that from 1 April 2022, all members of the civil service pension arrangements will only be able to accrue benefits in alpha and concurrently the PCSPS(NI) will close to future service accrual.

### Added pension (question 1)

**5.3.** Remove the restriction on members purchasing alpha added pension by lump sum in the first 12 months of alpha service for members with service in the PCSPS(NI).

**5.4.** This is necessary as the remedy will create an oddity where no members being moved to alpha will be able to buy added pension by lump sum as they do not have 12 months of alpha service. Furthermore, as part of the “retrospective remedy” all in scope members already in alpha will be rolled back into PCSPS(NI) in respect of any pensionable service rendered between 1 April 2015 and 31 March 2022. This will be implemented retrospectively in 2023, meaning that their first year of service in alpha would be 2022-23, invalidating any added pension purchased in this year.

**5.5.** This was not the policy intent of the original rule, hence the change. We clarified in the consultation the position on added pension in light of the McCloud remedy implementation. This does not require rule changes, but members who have existing PCSPS(NI) added pension or added years contracts to make future contributions will be allowed to continue with them post 1 April 2022.

**Question 1 asked respondents to comment on whether the draft regulations are sufficient for the purposes of implementing the prospective remedy?**

## Responses to Question 1

**5.6.** In total nine stakeholders responded directly to Question 1. Two supported the proposal and agreed it would meet the objective to move all active members of the PCSPS(NI) (including partial retirees) to alpha on 1 April 2022, while seven raised some concerns or made suggestions.

**5.7.** The Alliance Party agreed with the proposals under question 1 stating "The draft regulations as outlined in the consultation document, clearly present the regulations and processes that will need to be followed in order to implement the prospective remedy. We believe them to be sufficient for the purposes of implementing the prospective remedy."

**5.8.** NIPSA agreed the proposed changes to move all scheme members into one scheme would "remove the discrimination found as a result of the McCloud legal case in that all scheme members will be on the one scheme" and agreed with the proposal to remove the restriction on members purchasing alpha added pension by lump sum in the first 12 months of alpha service. NIPSA also commented that "this move does not remedy the member benefits that scheme members were entitled to as a result of the 2016 scheme evaluation but rather means that scheme members will pay for the prospective remedy." However, the treatment of remedy costs as member costs in the 2016 Scheme Valuation falls outside the scope of this consultation.

**5.9.** Individuals' concerns or suggestions were that:

- Every member impacted should be written to and CSP(NI) should be resourced to have dedicated staff for members to contact directly to discuss the various queries they would have or consideration should be given to offering online webinars;

- Individuals are presented with hugely complex documents which are beyond comprehension due to the referencing of other complex regulations and articles. Thus in reply to this comment I do not understand enough about all of this to reply. If DOF were really serious about explaining any of this stuff to the people impacted they would run live seminars with question and answer sessions around all sections of the civil service.

- The proposals are flawed, they are still discriminatory on age grounds. Younger civil servants will been in Alpha (a worse scheme in all regards to Classic) for longer than older civil servants. Moving staff across to Alpha on 1st April is also a breach of their employment contracts as they didn't sign up to Alpha when they joined the NICS;

- A transfer to the Alpha scheme means that those around 40- 45 years old may not be able to retire on Alpha until they are 70, at the rate that pension retirement age is increasing. We demand that our terms and conditions are respected, including maintenance of the premium scheme.

- There is nothing in the regulations that addresses the difference in contributions, i.e. if the classic contributions were cheaper than those for Alpha and the member opts to revert to Classic for the April 2015 to 2022 period, do they get a refund on the difference in contributions paid?

**5.10.** The FDA and Community Trade Union commented as per the following extracts:

**Extract from FDA response to Question 1:**

| |
|---|
| The draft regulations state that those members who are already in receipt of pension will be given a choice as soon as possible after the new legislation has been implemented.<br>The FDA is opposed to the exclusion of a time frame for the removal of discrimination in which these sensitive cases will be dealt with and propose that time limit/frame is established in the draft regulations during which these cases are redressed.<br>The exclusion of a timeframe implies that significant delays are anticipated, to the probable detriment of our members. This is why the regulations should also include the payment of interest on pensions in underpayment. |

**Extract from Community Trade Union response to Question 1:**

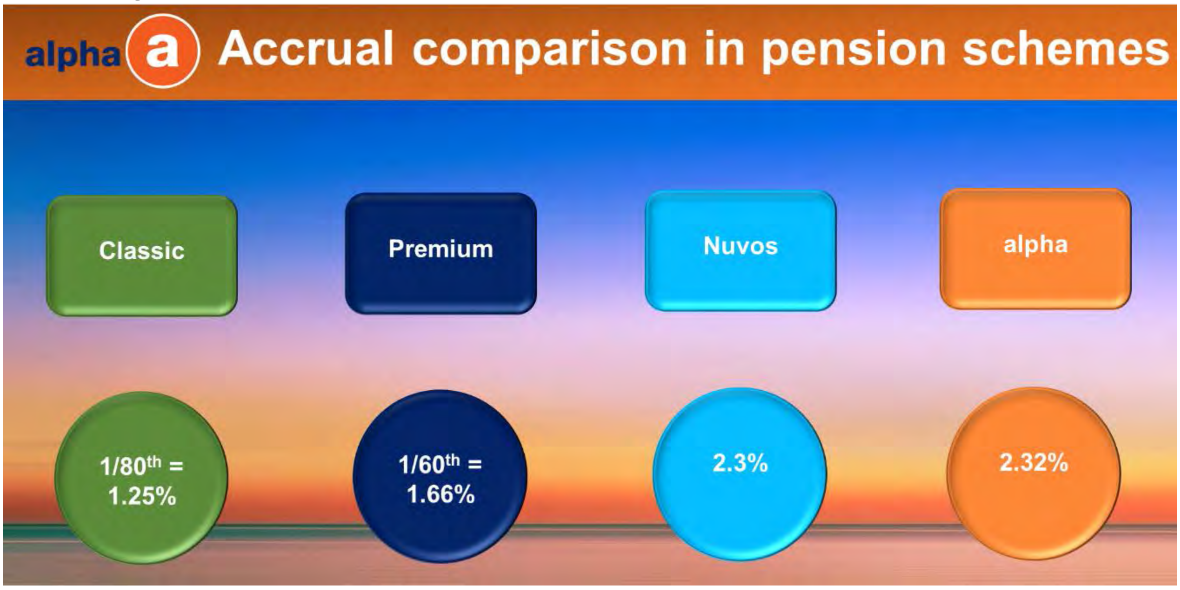
| |
|---|
| We believe that the entire premise of the prospective remedy is incorrect as we have stated in detail in our previously submitted consultation response. |

## Department of Finance Response to Question 1

**5.11.** The implementation of the prospective remedy is the first step to removing the discrimination identified by the Court of Appeal in December 2018. The courts required that this unlawful discrimination be remedied by the Government. It is important to note that the transitional protection element of the 2015 reforms was found to be discriminatory, not the reformed scheme (alpha) itself. The courts ruled the transitional protection afforded to older scheme members unlawfully discriminated against younger members, as transitional protection was only offered to older scheme members.

**5.12.** With regard to concerns raised in the first two bullet points under 5.9 above, as detailed under "Stakeholder Engagement" starting at paragraph 3.3 of this document, the Department of Finance wrote to individuals affected by the move to alpha from 1 April 2022 and issued Employee Pension Notices about the prospective remedy consultation and remedy work. Furthermore all current members of the PCSPS(NI) scheme were invited to a live engagement session which took place on 4 March 2022. Members were also directed to a dedicated webpage on the Department of Finance website which contains key messages about moving to alpha and is designed to alleviate concerns. The website contains a wide range of information and guidance to help scheme members understand if they are affected, including updates on the McCloud 2015 Remedy; short information videos; Frequently Asked Questions; and a Fact or Fiction page designed to resolve some of the uncertainties and reassure scheme members, particularly those due to move to alpha on 1 April 2022. In addition members can (and do) contact CSP(NI) with questions around the McCloud remedy and these are normally dealt with by the CSP(NI) McCloud Implementation Team.

**5.13.** The statement that alpha is a worse scheme in all regards to Classic is factually incorrect as some scheme members may be better off in the reformed alpha scheme. In many cases the reformed scheme is more generous for members, especially for those with less dynamic salary increases throughout their career. The Hutton Commission identified the Career Average Revalued Earnings (CARE) scheme design as inherently fairer for many lower paid members. Any reversal of the reforms would make these members worse off. The accrual rates in each of the arrangements/schemes are as follows:




**5.14.** In response to concerns about breach of employment contracts or Terms and Conditions, the Independent Public Service Pension Commission Report by Lord Hutton commented at page 152 that "legally the full extent of accrued rights is inherent uncertain. For example, general provisions of occupational pension law require that an active member is at least awarded a deferred pension, however the actual nature of a member's rights and protections has to be considered and can vary from scheme to scheme, depending on scheme rules and how the scheme has been operated". It should be noted that there is a commitment to protect accrued pension and members will not lose any pension already built up in the PCSPS(NI). Furthermore, the Commission recommended the preservation of the final salary link for past service for current public service pension scheme members to achieve this. This approach has been adopted and the final salary link will be maintained provided there has not been a disqualifying break of 5 years or more. The Department of Finance remains of the view that the proposal that anyone who remains in service from 1 April 2022 will do so as a member of their respective reformed scheme is appropriate and ensures equal treatment in terms of scheme membership.

**5.15.** Contribution rates from 1 April 2015 have been the same across both the Northern Ireland Civil Service pension schemes i.e. PCSPS(NI) (which includes Classic, Classic Plus, Premium and Nuvos arrangements) and alpha. Therefore, members would have paid the same contribution rate regardless of which scheme they were participating in, consequently we don't expect to refund contributions.

**5.16.** The FDA's response around the exclusion of a timeframe and the payment of interest on pensions in underpayment pertains to the "retrospective remedy" and Deferred Choice Underpin (DCU) considerations. The implementation of the remedy via the DCU and relevant timescales will be dealt with through the planned retrospective regulations and will be consulted on at a future date. The Department of Finance recognises the need to process cases as soon as possible, but there are substantial legislative and administrative challenges to doing so earlier than the planned October 2023 date.

**5.17.** The response from Community Trade Union to Question 1 has been noted.

**5.18.** There were no objections received with regard to the proposal to remove the restriction on members purchasing alpha added pension by lump sum in the first 12 months of alpha service for members with service in the PCSPS(NI). For members who have already transitioned to alpha before 1 April 2022 and believe they have been disadvantaged by not being able to purchase added pension by lump sum for their first 12 months in alpha, they will be able to apply under the "contingent decisions" route which will be set out in the retrospective regulations. The Department of Finance therefore plans to implement the proposed added pension changes.

## Ill Health Retirement (question 2)

**5.19.** The Department of Finance will provide that members who apply for ill-health retirement under PCSPS(NI) before 1 April 2022, where the application is determined in their favour after that date, will not be placed in a less generous position than if their application had been approved on 31 March 2022.

**5.20.** From 1 April 2022 onwards, active members who will be moved to alpha and subsequently become subject to ill-health retirement, will be assessed, and receive ill-health benefits, in accordance with the ill-health arrangements in alpha – this means that cases will become subject to different qualifying criteria than under the legacy scheme rules.

**5.21.** There will be cases where the ill-health process will begin on or before 31 March 2022 and will not conclude until 1 April 2022 or later. Current transitional provision allows the date a legacy scheme member would otherwise join the new scheme to be delayed until their ill-health pension application has been decided or, where it is not decided in the member's favour, until the member withdraws the application or all appeal routes have been exhausted.

**5.22.** This provision was permitted by exceptions in the Public Service Pensions Act (Northern Ireland) 2014 (the 2014 Act) that allowed certain members to remain in the legacy scheme after the date they were due to join the new scheme (between 1 April 2015 and 31 March 2022). The powers under which those exceptions were made are removed from the 2014 Act by the PSPJO Act from 1 April 2022. This means that all legacy PCSPS(NI) scheme members, including any members who have submitted an application for a legacy scheme ill-health pension, will join the new scheme on that date.

5.23. Therefore there is a need to deal with legacy scheme ill-health pension applications received before 1 April 2022 which have not been completed by 31 March 2022. Cases where an application is completed after 31 March 2022 need to be considered and the benefits determined.

5.24. For any ill-health cases where this is the case, the intended policy is that there should be an "ill-health retirement underpin". This will mean that such members receive a 2015 scheme ill-health pension calculated at the date they actually retire; but that if a legacy scheme ill-health pension calculated as at 31 March 2022 would have been more favourable, the 2015 scheme pension (alpha) must be increased by the difference between the two.

5.25. The "underpin" will effectively guarantee the member an ill-health pension that is at least as much as they would have received had they been ill-health retired under the terms of their PCSPS(NI) legacy scheme on 31 March 2022.

5.26. The proposed ill-health underpin will work as follows:

- The member applies for ill-health retirement on or before 31 March 2022, but the outcome of the application is still outstanding as of that date. The date of the application is based on the receipt of the application by the Scheme Medical Adviser.

- The member moves to alpha on 1 April 2022 and remains in the scheme until the date of ill-health retirement.

- An ill-health pension is calculated under the rules of alpha.

- A notional ill-health pension is calculated in accordance with the member's legacy scheme provisions if they would have met the criteria for an ill-health pension under the legacy scheme had their case been determined on 31 March 2022.

- Where the ill-health pension award is more favourable under the rules of alpha, the award will be paid from alpha based on the standard ill-health retirement rules of alpha.

- Where the notional legacy scheme award is more favourable, the difference between both calculations will be paid to the member as an alpha pension enhancement on top of the benefit, if any, that would be paid under the standard alpha ill-health retirement provisions.

- Survivor benefits would be paid in accordance with the benefits the member receives.

- However, the underpin will also need to allow for the "retrospective remedy" provisions for choice set out in the PSPJO Act and provided for in due course under scheme regulations for "retrospective remedy". The provision and continuation of an underpin ill-health pension or death and survivors' benefits related to legacy service for the remedy period would depend on legacy service applying for the remedy period (i.e. for the service between 1 April 2015 and 31

March 2022 taken into account for purposes of determining the alpha ill-health retirement “underpin” pension). Therefore, if as a result of a decision by or on behalf of a member, alpha terms were applied for the remedy period, such underpin benefits would either not be payable (if the ill-health process begun before 1 April 2022 had still not been completed) or, if already paid, would be removed and replaced by the benefits that would be payable under the standard 2015 scheme terms without an underpin. Excess benefits already paid would then be recoverable.

**Question 2: the ill-health retirement amendment reflects the unique position of the group being moved to alpha and will ensure that a member who applies for ill-health retirement before 31 March 2022, and where the application is successful, is treated no less favourably than if the application had been determined on that date. Do you have any views on this proposal, in particular, whether there are any adverse impacts about which you are concerned?**

## Responses to Question 2

**5.27.** Eight respondents answered Question 2, five of which supported the proposal that members should not be treated less favourably due to the move to alpha on 1 April 2022 but suggested or queried the following:

- If a member is critically ill and is approved for SIHR or Upper Tier alpha, with their leaving date to fall in after 01 April 2022, can consideration be given to honour the terms of alpha if they are to waive their notice period and retire sooner, due to a risk of death?

- Any ill-health retirement should have a proper “ill-health retirement underpin” that will provide the option to have applications considered under legacy or alpha rules in the same way that other scheme members will have when they retire.

- Could result in increased numbers of IHR applications prior to 01/04/2022.

- Prolonged delays to the payment of any underpin for those where benefits are calculated under the reformed scheme before the completion of a check under the legacy scheme is unsatisfactory.

- If a member receives an underpin top up to their Alpha benefits, we request the survivor benefits be calculated according to the same terms to ensure they too do not receive an award that is less favourable. A survivor should not be any worse off following the member’s death.

- 2.25 states: Survivor benefits would be paid in accordance with alpha scheme regulations – Can precise details of this be made clear to anyone being shown comparative figures?

- Any excess benefits already paid in the event of an ill health award should not be recovered.

**5.28.** Pertinent extracts from responses received are replicated below:

**Extract from the Alliance Party response to Question 2:**

The proposals regarding the ill-health amendment will ensure that members who apply for ill-health under PCSPS(NI) before 1st April 2022, where the application is determined in their favour after that date, will not be placed in a less generous position that if that had their application approved on 31st March 2022.

Whilst we understand the need for these amendments with regards to facilitating the cross over to alpha for all members, we would hope that this amendment does not allow for a loop-hole, in which an abnormally high-volume of ill-health retirements will come about as a result of action before the 31st March deadline.

**Extract from NIPSA response to Question 2:**

**Ill-health retirement:** NIPSA welcomes the commitment that those scheme members who claim under a legacy scheme but where any decision is not made until after 01 April 2022, will be protected. However, there is nothing to mitigate any disadvantage if you claim after 01 April 2022 as it is the case that while some members may benefit from an ill-health retirement under Alpha, many will be disadvantaged. At this time these changes are just proposals out for consultation. However, once decided upon, there will not be time for scheme members, who may be contemplating ill-health retirement, to properly take advice from their medical experts regarding their capacity to return to work, meet their manager/s, take advice from their trade union or financial expert regarding ill-health retirement and submit an application within the short timeframe of the Department publishing the outcomes of the consultation and 01 April 2022. NIPSA therefore believes that any ill-health retirement should have a proper “ill-health retirement underpin” that will provide the option to have applications considered under legacy or alpha rules in the same way that other scheme members will have when they retire.

**Extract from FDA response to Question 2:**

The FDA agrees that a process is required for ill health retirement applicants who’ve been unable to complete process before the 1 April 2022.

Additionally, we believe that scheme members who apply for ill health retirement up to the 1 April 2022, should be automatically given the option of having a dual ill health retirement assessment applied.

Prolonged delays to the payment of any underpin for those where benefits are calculated under the reformed scheme before the completion of a check under the legacy scheme is unsatisfactory. These checks must be completed at the time the ill health award is granted to ensure there is no delay to the payment of the full pension, regardless of which calculation would be more favourable.

The FDA is opposed to the calculation of Spouse benefits under Alpha only. If a member receives an underpin top up to their Alpha benefits, we request the survivor benefits be calculated according to the same terms to ensure they too do not receive an award that is less favourable. A survivor should not be any worse off following the member’s death.

The FDA does not accept that any excess benefits already paid in the event of an ill health award be recovered. To mitigate against this, is the use of our proposed dual assessment of all ill health awards when addressing the member choice under the “retrospective remedy” provisions.

**5.29.** The remaining three responses to question 2 were received from individuals who were less supportive stating:

- Of course the proposals will have adverse impacts as anyone who suffers ill-health after 31 March 2022 will be worse off.

- Again, another clear disadvantage and another breach of our terms and conditions, as well as death benefit, which has been conveniently removed from the consultation.

- This appears to remain an imbalanced proposal for those who were able to remain in the legacy scheme, albeit now having the 10 year opportunity to avail of the ill health benefits of the legacy scheme reduced to 7, however this does not address the discrimination of this aspect for members who were not able to remain in the legacy scheme and as such benefit from its ill-health retirement package, particularly the added years aspect. Therefore members who were not at the ‘older’ age in April 2015, will continue to lose this benefit from April 2022, when the remedy is enacted, and they will not have been given the same opportunity of having 7 years to avail of the classic ill health benefits that the ‘older’ members who remained in the legacy scheme were given.

## Department of Finance Response to Question 2

**5.30.** The proposed regulations refer to the closure of the legacy schemes with effect from 31 March 2022 and moving all members to the reformed scheme alpha, with effect from 1 April 2022. This is known as the prospective remedy. The regulations to enable the immediate detriment cases to be worked through form part of the next stage of the remedy to be covered by further regulation amendments in 2023, known as the “retrospective remedy”. There will be an opportunity to comment on these regulations which will also be consulted upon. Once the necessary legislation is in place it is our intention to look at this population at the earliest opportunity, and put a timeframe in place to process these cases.

**5.31.** The priority member group for this specific consultation consists of those members who are in the unique position of having made an ill-health application before 1 April 2022 that has not been completed by that date. We will use powers provided under the PSPJO Act to make regulations protecting the position of ill-health retirees whose cases are pending on 31 March 2022, and in particular to ensure they are no worse off as a result of a decision being made after that date. The date of the application is based on the receipt of the application by the Scheme Medical Adviser, i.e. this must be received on or before 31 March 2022. Applications for ill-health retirement from 1 April 2022 onwards, which are outside the remedy period, will be assessed under the alpha pension scheme terms and therefore those members will be treated the same as all alpha scheme members. Providing actual legacy-equivalent benefits in relation to service after 31 March 2022 would effectively be allowing an exception to further accrual in the legacy schemes which is explicitly prevented by the PSPJO Act and would prolong the discrimination identified by the McCloud judgment which the Act sets out to address.

**5.32.** Members who leave service on ill-health grounds prior to 1 April 2022 and are in scope for remedy, including those who leave under the serious ill-health provisions, and will be reassessed under the alternative scheme as part of the "retrospective remedy" which is currently under policy development. Members who fall into the serious ill-health category will be given utmost priority.

**5.33.** In respect of survivor benefits, the amount of any survivor benefit payable will be determined from the ill-health pension, including any underpin. The underpin provides that legacy members and their dependants are not placed in a less beneficial position than they would have been had the outcome of their application been determined under legacy scheme criteria and their retirement on ill-health grounds had taken place on 31 March 2022. This clarifies what was in the original consultation. Comparative information, including survivor benefits, will be provided before any remedy choice is due to be made.

**5.34.** Ill-health retirement pensions include early payment of the benefits that have been built up in each scheme an individual has been a member of, but in circumstances where the individual is entitled to a further benefit enhancement, this has to reflect the rules of the scheme they were a member of at the point of ill-health retirement. It is for this reason that the intended policy is that there should be an ill-health retirement underpin.

**5.35.** Concerns around contracts or terms and conditions are addressed in paragraph 5.14 above.

**5.36.** In the last bullet point under paragraph 5.29, the individual is alluding to the transitional protections periods which the Court of Appeal deemed to be unlawful discrimination. The remedy to remove the discrimination is that all active members will be members of the alpha pension scheme from 1 April 2022 onwards. Those with remedial service from 1 April 2015 to 31 March 2022 will be given a choice between legacy and reformed scheme benefits for the remedy period as soon as practicable if they have already left service or taken scheme benefits, or when they come to retire if they remain in service and have not partially retired.

**5.37.** Ill-health retirement cases that fall outside the scope of the ill-health underpin, and where the member has remedial service, will be considered under the "retrospective remedy" which is currently under policy development and will be the subject of further consultation at the earliest possible opportunity.

## Other areas needed for the prospective remedy (question 3)

**Question 3: are there any other areas which you think should be addressed in these regulations in order to ensure that all members are successfully moved to alpha from 1 April 2022?**

## Responses to Question 3

**5.38.** The following is a synopsis of matters raised by the ten respondents who answered Question 3:

- No, we are content that the regulations detailed will ensure that all members are successfully moved from alpha from 1st April 2022.

- Given the change in rules around Death nomination for the schemes, I believe any written communication to impacted members should also be furnished with a new Death Nomination form.

- By imposing the Alpha scheme I was put in a position whereby I was required to minimize the impact of the later retirement date associated with the Alpha pension (67) and I would have to pay additional into the EPA system offered to reduce the age of 67 for Alpha entitlement. This element of the pension system should be reviewed under equality and fair treatment of staff to ensure it doesn't fall foul of age discrimination legislation.

- Allow staff the choice of moving to Alpha or staying on Classic.

- Questions –
  1. For NICS members who felt that they had to partially retire, within this 10-year transitional protection period to avail of their CLASSIC pension entitlement, has any calculation been carried out on those NICS members' pensions to determine if those individuals are now worse off? Would those NICS members have benefitted from staying longer in post and obtaining promotion to enhance their pension entitlement?
  2. If the very act of the transitional protection itself has forced older NICS members to partially retire much earlier and they have been put at an unnecessary financial disadvantage due to lack of promotion opportunities, overtime etc, are compensatory payments being considered as part of these regulations?
  3. Have calculations been carried on other types of pension schemes to determine which was more favourable for NICS members partially retired on CLASSIC within this 10-year transitional period?

- The main area to be addressed and one which these biased regulations do not cover is the fact that individuals who were employed on a certain set of terms and conditions should have the choice to not be "Successfully" moved to an ALPHA pension.

- Again, comments in the consultation, and previous consultation, that suggest that staff will be better off in the new pension are fraudulent and comments relating to the incapacity of understanding financial choices insulting, quite frankly.

- Refund of any excess contributions paid if a member chooses to revert to the previous scheme.

- We believe that the entire premise of the prospective remedy is incorrect as we have stated in detail in our previously submitted consultation response.

**5.39.** The FDA raised concerns around those members with reduced life expectancy and the need to assess and process these members as a priority.

**Extract from FDA response to question 3:**

| |
|---|
| There is need for clarification and confirmation of how those who are retired on the grounds of ill health due to reduced life expectancy will be assessed. We believe that these members should be given the highest priority and dealt with immediately once the legislation is implemented. |

## Department of Finance Response to Question 3

**5.40.** The suggestion around Death Nomination forms is a valid point as members of the Classic pension arrangement can only have one death benefit nominee whereas an alpha member can have multiple death benefit nominees if they so wish. This point is particularly highlighted to members transitioning to alpha and furthermore all members are encouraged at every opportunity to ensure their death benefit nominations are kept up to date and to ensure that a death benefit nomination is held on their pension record.

**5.41.** Effective Pension Age (EPA) is an option available to members of alpha. By paying higher contributions, members are able to take part of their pension earlier than their Normal Pension Age (NPA) without any early payment reduction. In alpha the NPA is the same as the State Pension Age (SPA). If members choose to take alpha pension benefits before their NPA they would be reduced as they may be paid to them for longer. Members who remained in PCSPS(NI) were not able to purchase EPA (as the retirement age is significantly lower). As members of alpha from 1 April 2022 they will have the choice to purchase EPA. EPA and other matters such as partial retirements and other such decisions will be covered in more detail in the next stage of the remedy, known as the “retrospective remedy”, and do not impact on the draft regulations to move all members to alpha from 1 April 2022 which is the subject of this consultation.

**5.42.** Permitting members to remain in ‘Classic’ or any of the other legacy scheme arrangements would extend the period of discrimination as identified by the Court of Appeal. The Department of Finance does not agree that moving previously protected members to the alpha scheme introduces any new unlawful difference in treatment of a type identified in the transitional protections by the courts. It is acknowledged that some respondents have a desire to maintain their current arrangements until the point at which they retire, even if this is after 1 April 2022. However, in introducing reformed schemes it was never the intention that legacy schemes would continue indefinitely. The transitional protections represented a targeted exception to the core policy rationale on the basis of the intended aim of protecting those within 10 years of retirement from the reforms. However, as a consequence of the court’s ruling, that exception can no longer be justified as legitimate for future service from April 2022 and the Department of Finance does not believe it would be fair to allow some members, and not others, to continue under different arrangements and as members of different schemes, after the discrimination has been addressed and the remedy period ends.

**5.43.** Comments were repeated around the betterment of legacy versus reformed pension schemes, employee terms and conditions and contribution refunds and these have been considered and responded to under paragraphs 5.13 to 5.15 above. The Department of Finance is committed to providing members the adequate time, tools and information to inform knowledgeable decision making. Illustrative comparative working examples will also be made available, however the differences between the legacy and reformed pension schemes mean the set of benefits that is best for members depends on their own personal circumstances and preferences. This is why the Department of Finance is providing members with a choice, to ensure they can choose which scheme benefits are better for them. In advance of making their choice, schemes will provide information to members setting out their entitlement under both options, so members will have a clear understanding of the benefits available to them.

**5.44.** The response to question 3 that states "We believe that the entire premise of the prospective remedy is incorrect as we have stated in detail in our previously submitted consultation response." has been noted. The rationale and justification for the remedy is detailed in the earlier Department of Finance Response to the consultation "Public service pension schemes: Changes to the transitional arrangements to the 2015 schemes".

**5.45.** As referenced in Question 2, the Department of Finance continues to view the ill-health population as a priority group and are examining how they can be reassessed and processed ahead of the planned DCU date of October 2023. Any such regulatory changes needed would form part of a future Statutory Rule dealing with the retrospective element of the remedy, rather than the closure of the PCSPS(NI).

**5.46.** Based on the above feedback, the Department of Finance does not intend to propose any additional measures for the prospective remedy regulations.

**5.47.** The Department of Finance is committed to keeping members fully informed of the McCloud Judgment and the subsequent 2015 Remedy by dedicating a section of the Civil Service Pensions (NI) website to this topic. The content is updated regularly as further information becomes available, and currently includes three videos on the 2015 remedy, Fact or Fiction information and FAQs. Legacy scheme members recently attended a live information session on 4 March 2022, where they received an update on the reforms, information on the alpha pension scheme and how it compared to the legacy arrangements, and officials answered questions submitted in advance of the event. A recording of this event will also be published.

## Equality considerations (question 4)

**Question 4: Are there any further considerations and evidence that you think Department of Finance should take into account when assessing any equality issues arising as a result of the proposed amendments? Any comments should be made after reading the accompanying Section 75 Equality Screening document.**

## Responses to Question 4

**5.48.** The Alliance Party and FDA did not raise any further equality considerations in their respective responses:

**Extract from the Alliance Party response to question 4:**

| |
|---|
| No, the Section 75 Equality Screening Document highlights that this change may benefit some older members who qualified for transitional protection and retained membership of the PCSPS(NI) after 1st April 2015 as they move to the alpha pension scheme from 1st April 2022. It is noted that this benefit for some members is due to the policy imperative to remove unlawful discrimination that has previously been identified by the Courts. |

**Extract from FDA response to question 4:**

| |
|---|
| We do not envisage any equality impacts from the proposed reforms. We believe that these reforms will improve the intergenerational fairness of the mechanism, and all members will be treated equally in respect of their membership of the Alpha scheme once the discrimination has been addressed. |

**5.49.** Community Trade Union submitted the following comprehensive response to question 4:

**Extract from Community Trade Union to question 4:**

**6.1** We believe HM Government's proposed remedy DOES remove the discrimination caused by the specific transitional protections, but DOES NOT remove discrimination for NICS members within the wider transition to the ALPHA pension. Before we evidence this, we feel we should provide some context.

**6.2** HM Government's view is that life-expectancy is increasing. We would question that based on recent reports that life expectancy is not increasing and has in fact fallen for males and remained static for females. These were pre-COVID studies, and coupled with HM Government's austerity programme, increased suicide rates and the as yet unknown long term impact of Covid-19 think HM Government's justification for such savage pension reform appears to be diminishing. What is also required to be considered, almost uniquely for prison officers, is the impact of the specific nature of the work – work that is well understood to have a detrimental effect on health. However, life-expectancy is a feature of ALPHA and we do accept it is fair to make certain assumptions based on life-expectancy, when formulating pension provision, but that there should be prison officer specific regulations.

**6.3** From 1st April 2022 NICS members are not choosing to be members of the ALPHA scheme, instead they are being forced to pay into the ALPHA scheme. The reason they are forced is three-fold:-

a) They have no reasonable alternative.

b) The continued linkage between the previous schemes, specifically the 'final' salary element and double accrual.

c) The death in service benefits.

**6.4** We contest this places an enhanced duty on HM Government not to discriminate against, or treat unfairly, any scheme members transferring over, more so than those who joined voluntarily from 2012 in the “knowledge” they would transfer to ALPHA in 2015. While HM Government has maintained that linkage between elements the schemes, as evidenced above, it is clear that some of the original schemes are entirely different financial products from ALPHA – essentially NICS members will have two separate pensions from 1st April 2022.

**6.5** Our views are often misinterpreted, either disingenuously or through a lack of understanding, as saying the ALPHA scheme is illegal – this is NOT our view. We believe the 2015 ALPHA scheme is generally fair and legal, and do not challenge the validity of that scheme for NICS members who join it voluntarily i.e. where it is not linked to a previous pension with different terms and conditions, and a different NPA.

**6.6** Using DIRECT COMPARATORS, that is to say officers who joined their respective pension schemes, under the same terms and conditions and working the same length of time, the following true life scenarios highlight the crux of the issue: – An officer joins the classic Scheme in 1991 aged 30 and her colleague joins classic also at the age of 30 but in 2001. The officer joining in 2001 reverts to ALPHA are per HM Government’s proposed remedy in 2022. One retires in 2021 after 30 years’ service, the NPA for that scheme. The other retires in 2031 also after 30 years’ service but with a NPA having been moved to ALPHA of 68. This means the younger officer will have to take an actuarially reduced pension of 8 years (currently though this could get even worse) to take a pension having served the same length of service as her older colleague. Both officers might collect a similar pension though this an unknown, but the older officer gets a lump sum over double of the younger officer. Also the younger officer has their terms and conditions changed without them having a choice in the matter from their legacy scheme, which they joined up to, to a new scheme which they did not.

**6.7** Any suggestion that younger members can in some way off-set their losses on ALPHA due to retiring and living longer on their legacy scheme pensions is totally contrary to the well-established principle (and HM Government’s promise) that accrued rights are protected.

**6.8** Actuarial reductions for those who leave the ALPHA scheme before aged NPA instinctively seem unfair and discriminatory, even for those who join the NICS service and join the ALPHA scheme directly today. Perhaps there is some logic in terms of staff retention, akin to double accrual on the older scheme (although presumably there was a good reason double accrual was never a feature of the newer scheme). However, as demonstrated above, there can be no justification in terms of pension contributions versus life expectancy.

**5.50.** The following is a synopsis of new matters raised by the five individual respondents who answered Question 4. Duplicate, similar or repeated responses are dealt with under the question that they were first mentioned:

- There are remedy cases who are already partially retired, and have since accrued additional pension in their current scheme and are past scheme pension age. These cases negotiated their working patterns for partial retirement to minimise abatement and did not expect any further Occupation pension to be payable until after they retired. I would believe it reasonable to allow payment of additional pension accrued to be paid without applying an abatement in the circumstances.

- One equality issue I would raise as someone who began working in the civil service in 1999 is why the pension arrangements of teachers were resolved in a different manner to civil servants given that these pensions are paid out of government finances.
(https://www.education-ni.gov.uk/sites/default/files/publications/education/nitps-factsheet-4-retirement_0.pdf )
Surely it is a fairly fundamental equality issue when you treat one section of workers different from another and don't ever explain why?

- The age discrimination remains if there is not equal timelines allowed for all other members to avail of ill health benefits under their old scheme, particularly the aspect of added years.

## Department of Finance Response to Question 4

**5.51.** Responses to each of the above are set out below.

**5.52.** In response to the Community Trade Union comments, as responsible authority for public service pension policy the Department of Finance has an associated duty to keep arrangements under review and to take forward changes when it judges it necessary to do so for reasons of equality, to comply with legal challenge, or for effective cost management. The original 2015 reforms as approved by the Assembly in 2014 represent the outcome of such a review. The objectives and rationale of the reforms remain valid. The reformed public service schemes are designed on the basis of a longer working life to cover the cost of a longer retirement across the wider public service workforce.

**5.53.** Prison Officers are members of the Civil Service pension schemes, the policy and rules of which are governed by the Department of Finance. The 2015 reforms, introduced as a result of Lord Hutton's report, regularised the position for most staff and linked the pension age to state pension age. The policy to link public service pension ages to state pension age for Prison Officers, was established in the Westminster Public Service Pensions Act 2013 and The Public Service Pensions Act (Northern Ireland) 2014. Public service pension age was considered by the NI Assembly during the passage of the Public Service Pensions Act (Northern Ireland) 2014, including circumstances where a specific provision should be made for any particular workforce. The Assembly determined that a workforce specific pension age would be appropriate in the case of Police and Firefighter schemes **only**. This position has not changed and furthermore it does not fall within scope of this consultation.

**5.54.** The policy decision to move all remaining active members to the alpha pension scheme from 1 April 2022 and close the legacy schemes to future service accrual after 31 March 2022 emerged from the earlier consultation entitled "Public service pension schemes: changes to the transitional arrangements to the 2015 schemes". The consultation to which this response relates covers the Statutory Rule required to implement the move to alpha and closure of legacy schemes to comply with the relevant provisions in the PSPJO Bill. Therefore, the Department of Finance has no further comment to make on this matter.

**5.55.** With regard to the direct comparator scenarios provided, some individuals who begin service at the same point in time, but who are of different ages will retire at different points in time under different arrangements. This can occur when pension arrangements change for the reasons given in 5.52 above. By 2022 the 10 year prescribed period for transitional protection will have expired and the majority of previously protected members are expected to have retired or to do so in the coming years. By 2022 all members will also have had at least 19 months' notice about the remedy proposals and those who have chosen not to retire will have the same opportunities as other members of the reformed schemes to remain in service until at least or beyond their new scheme NPA, and have options to accrue more benefits in total over a longer period of service. They will continue to have access to a defined benefit, index linked, government backed pension arrangement with a significant employer contribution under the now more equitable and sustainable reformed CARE scheme model (alpha) approved by the Assembly in 2014.

**5.56.** Matters such as partial retirement, re-employment, abatement and other scheme-specific elements or "contingent decisions" will be addressed in detail during the "retrospective remedy" phase and have been noted accordingly in the interim.

**5.57.** On the question of comparison between the civil service and other sector pension schemes i.e. Teachers, this falls outside the scope of the consultation. Public sector pension arrangements vary across the public sector as they are subject to different rules and regulations. The civil service pension scheme remains a generous pension scheme, with civil servants paying considerably less in pension contributions when compared to other public sector schemes.

**5.58.** The final bullet point under 5.50 has been considered under paragraph 5.36 above.

## Proposal: technical amendments (question 5)

**5.59.** Opportunity was also being taken in the consultation to make the following proposed corrections and clarifications:

- retrospective amendment to regulation 121 to make clear that payment of the lump sum death benefit is discretionary. This will bring alpha provisions into line with existing practice, the PCSPS(NI) and other public service pension schemes, and will achieve the intended effect in relation to inheritance tax. This amendment is not considered to have an adverse effect on members. The provision would be effective from 1 April 2015;

- amendment to regulation 142 to correct a cross reference to the wrong subsection of the Pension Schemes (Northern Ireland) Act 1993;

- amendment to paragraph 7 of schedule 1 to remove the initial 12-month bar on making lump sum payments towards added pension for members transferring into alpha from the legacy scheme; and

- amendment to paragraphs 16, 17, 25 and 26 of Schedule 2 to make clear that in circumstances where transitional protection applied to people who returned to the civil service pension arrangements by virtue of employment with an organisation admitted under the New Fair Deal policy, protection also applied to people who returned by virtue of employment in the civil service.

**Question 5: Do you agree that the amendments referenced in [3.1] are correct and are you aware of any adverse impacts on members or the scheme that will result from them?**

## Responses to Question 5

**5.60.** The three unions who responded to this question, NIPSA, FDA and Community Trade Union, were not aware of any issues with the proposed amendments. The Alliance Party agreed that the amendments referenced in 3.1 are correct and were also not aware of any adverse impacts that will result for members of the scheme. They added that these amendments are largely technical and work to ensure that relevant legislation is update to reflect the requirements of the Public Service Pensions and Judicial Offices Bill.

**5.61.** Of the five individual responses received to question 5, one was not aware of any potential issues while the other four individual respondents queried them or sought clarification commenting as follows:

- Don't fully understand them

- This section is technocratic in nature referencing many different regulations, articles and documents. Basically these types of documents can mean literally anything and why they are sent out to ordinary individuals who have no hope of ever understanding what they are is beyond me. It simply strikes me as part of the general smokescreen which surrounds this whole area where the production of copious complex documentation is trying to cover up the fundamental wrong.

- By sending all this documentation, consultations, new legislation, etc… you do not validate this whole process which is fundamentally wrong and a clear breach of contract on your behalf.

- Para 3.1 states that the retrospective amendment to regulation 121 to make clear that payment of the lump sum death benefit is discretionary, and confirms this will not have an adverse impact on members, if this statement is true, it is unclear why the consultation question is asking if we are aware of any adverse impacts that will result from the amendments? The wording "… payment of the lump sum death benefit is discretionary." Would certainly suggest some explanation is needed as to why this is being written in, was it always discretionary, if so why, as I don't think members view it as discretionary and would plan they nominations for recipients on the assumption this will be paid.

## Department of Finance Response to Question 5

**5.62.** Under pensions tax rules, in order for the death benefit lump sum to be paid free of Inheritance Tax, it must be paid within 2 years of the administrator being made aware of the death for members aged under 75 at date of death and it must be discretionary, i.e. it cannot be automatically paid without consideration from the scheme manager or trustees. Lump sum death benefits paid at the discretion of the pension scheme providers or trustees do not form part of the member's estate or are chargeable to Inheritance Tax.

**5.63.** The existing rules were judged not to be fully clear on this last point, so this is an opportunity to clarify the rules and bring them into line with all sections of the PCSPS(NI) (where the rules provide that a death benefit "may be paid", not "is payable" as the alpha rules currently do) and other public service pension schemes. There will be no change to existing practice and there is no impact on members or potential beneficiaries.

**5.64.** With regards to drafting the amendment to regulation 121, Department of Finance have followed Cabinet Office's legal advisors recommendation in relation to the corresponding civil service scheme in GB which is further endorsed by this Department's legal advisors. Therefore instead of altering regulation 121(4) to confirm that the payment is discretionary, it would clearer for a reader of these regulations if the amendments to regulation 121 operated as follows:

1) In regulation 121(1), "is payable" will be changed to "may be payable"; and

2) Regulation 121(4) will be omitted.

**5.65.** These drafting updates have the same effect as the drafting originally presented with the consultation. They are also in keeping with provisions covering the same matter in the PCSPS(NI).

**5.66.** Separately, the Department of Finance has decided not to proceed with the amendment of regulation 142 to update a cross-referencing error due to concerns about the effect of the amendment on the transfer of member benefits. The Department will consider further and make an amendment at a later stage, if appropriate.

**5.67.** The Department of Finance acknowledges that legislative changes can be complex and technical in nature and endeavours to explain any implications in clear and concise terms. The Civil Service Pensions (NI) website contains valuable and important information around the remedy work being undertaken along with short videos and a comprehensive list of Frequently Asked Questions, specific to members of the NICS Pension Schemes, to address any queries that have been highlighted up to now. All members are encouraged to visit the website regularly as it will contain the most up to date position. Further member, employer and Trade Union engagement sessions are also planned as the remedy work progresses.

## Other comments received from respondents not attributed to questions 1-5

**5.68.** NIPSA submitted the following comments in their response:

**Extract from NIPSA response:**

As confirmed in the consultation papers, this process has arisen as the result of the UK Government being found to have discriminated in exercising the Hutton Reforms and this prospective remedy is a means to rectify this discrimination. **However, it fails to do so**.

Following a Government Actuary's Department evaluation of the PCSPS(NI) in 2016, it was confirmed that there had been a floor breach and that member benefits would be accrued as a result of this. However, Government postponed the implementation of these benefits until after the decision in the McCloud legal case was known. Having been found to have acted in a discriminatory manner, the Government retrospectively reviewed the 2016 GAD outcomes and this time, the scheme was found to be within the 2% corridor. This decision removed millions of pounds of benefits from scheme members and for the first time ever, those discriminated against paid for the remedy rather than the perpetrator. **This disgraceful position is not resolved by this consultation.**

Also, before seeking to respond to the main parts of the consultation itself, I would question a number of possible legal points.

Firstly, is this a lawful consultation? Is it the case that this consultation has been rushed and the Department has failed to undertake the process at a time when the relevant proposal was still at a formative stage and chose instead a time when the changes being considered are due to be implemented?

Another question is whether adequate information was provided to consultees to enable them to properly respond to the consultation exercise when Legislative Consent Motions and legislation are being rushed through the NI Assembly to meet the 01 April 2022 deadline?

And NIPSA also considers that, given a closing date of 25 February 2022, Purdah around 24 March 2022 and an implementation requirement before 01 April 2022, the Department will fail to give conscientious consideration to the consultees' responses. Clearly it would be impossible to do so within the time constraints.

As with every consultation, there is a requirement on the Department to meet its equality duty but we believe this duty will not be met given the decisions taken and time limits applied to this process.

Therefore, NIPSA believes that any response by the Department to this consultation must also answer these questions.

**5.69.** The response from the NICS Pension Scheme Advisory Board stated "SAB met on Friday 28 January 2022 and after receiving briefing on the Department's consultation on the draft Statutory Rule for the Prospective Remedy, duly noted its contents."

5.70. Other comments received from individual respondents include:

- This does not appear to be consultation as the remedy is already set in legislation and is due to commence on 1 April 2022. This being the case, what is the point in having a consultation process?

- The remedy does not fully address age discrimination as a result of the proposed changes to the PCSPS(NI).

- I have recently requested an estimate of my benefits with a view to leaving the service during 2022. I was informed by Pensions Branch that on leaving my benefits would initially be calculated on Classic scheme and Alpha from 2016. It would not be until October 2023 that I would be afforded a choice to move all benefits into the classic scheme if that was a more financially beneficial option. This timeline should surely be reviewed and staff given the option at the earliest opportunity on leaving service. Can Pensions Branch not recalculate benefits to allow the maximum pension to be paid from the outset?

- The maximum service within PCSPS is 45 years however this has not been altered when the Pension age was increased, in my case to 67. I believe this cap of 45 years should be removed to take into account the increase in Pension age.

- Whilst there are wide and complex issues around this issue I wish to submit for the Consultation Boards consideration a couple of minor yet fundamental points of concern:-
    - That the outcome in resolution of the issues caused would not be financially detrimental to any scheme members going forward;
    - That accrued rights under the classic scheme particularly for those whose retirement is imminent will remain fully protected;
    - That the automatic transfer to the Alpha scheme for members whose employment and pensions understanding was on the basis of the Classic Scheme, will not act detrimentally to Classic Scheme members either in terms of pensions calculations or lump sum benefit which benefits have been reasonably expected and relied on for many years (prior to 2012 in many instances) in terms of income planning for retirement.

5.71. Additional comments received were around issues such as EPA, partial retirement, abatement or contributions that will all fall under the “retrospective remedy” phase which will be consulted on at a later stage.

5.72. One respondent commented around specific employment contract matters which fall outside the scope of this consultation while others repeated comments about terms and conditions and accrued pension rights which has been addressed earlier in this response document.

## Department of Finance Response to other comments received

**5.73.** The Department of Finance has noted NIPSA's position with regard to the 2016 Scheme Valuation outcomes and has no further comment to make in this regard within this response document. The Department's views are contained in the published response document to the consultation on Public Service Pensions (Valuations and Employer Cost Cap) (Amendment) Directions (Northern Ireland) 2021.

**5.74.** The Department of Finance has lawfully conducted this consultation in accordance with section 21(1) of the Public Service Pensions Act (Northern Ireland) 2014. The wider policy formation stage was supported by a separate consultation which ran from 19 August 2020 to 18 November 2020. This consultation relates specifically to the amending legislation required to implement the prospective remedy, i.e. the moving of remaining active legacy scheme members to the alpha scheme from 1 April 2022 and the closure of the PCSPS(NI) to future service accrual after 31 March 2022.

**5.75.** As previously highlighted in this response document, the Department of Finance has provided various communications, including the issue of letters to individuals impacted by the move to alpha and held a live member engagement session for this targeted cohort of members. Employee Pension Notices have also been issued and a dedicated area has been developed on the Civil Service Pensions (NI) website which contains valuable information and resources for members. The Department also engaged with Trade Unions to establish if any more could be done to keep affected members informed but no suggestions were forthcoming.

**5.76.** The Department has absolutely given conscientious consideration to the consultees' responses within the confines of the scope of the consultation as the detail provided in this response document attests. Responses that fell outside scope have also been noted and, if appropriate, will be considered during policy development for the "retrospective remedy" phase.

**5.77.** The Department of Finance has considered the individual respondent comments received as listed above and responds as follows:

**5.78.** To remedy the discrimination identified by the Courts in the McCloud Judgment, Department of Finance previously held a public consultation on how to remove the discrimination across all relevant public service pension schemes which ran from 19 August 2020 to 18 November 2020. The consultation to which this response document refers covers the amending legislation required to enact the first phase of the changes (the prospective remedy) that are to be adopted as detailed in the response to the previous consultation and the requirements of the PSPJO Act. The Department of Finance conducts these consultations in accordance with section 21(1) of the Public Service Pensions Act (Northern Ireland) 2014.

**5.79.** The Department of Finance agrees that the prospective remedy does not fully address the discrimination identified. It does however remove the discrimination from 1 April 2022 onwards as all active members will be members of the same pension scheme regardless of their age. This is only part of the remedy work required. Further scheme-specific legislation is required to facilitate the "retrospective remedy" whereby eligible members will receive a choice at retirement of which pension scheme benefits they would prefer to take for any remedial service they have from 2015 to 2022.

**5.80.** Members who have already retired during the remedy period, or will retire after 1 April 2022, before the Deferred Choice Underpin (DCU) is implemented and have a period of relevant service between 1 April 2015 and 31 March 2022, will be offered a choice once the necessary legislative changes have been made. There are still complex issues to be resolved, such as interactions with the tax system or other scheme-specific consequential matters, before schemes will be in a position to process cases on a consistent basis. The legislation to give effect to the DCU is expected to be in place by 1 October 2023. However, the choice given to eligible members will be retrospective and backdated to the point that payment of pension benefits began.

**5.81.** There is no cap on service accrued in the nuvos or alpha pension scheme. The cap remains unaltered for service accrued in Classic, Classic Plus or Premium pension arrangements as the normal scheme pension ages did not increase to State Pension Age for these pension arrangements.

**5.82.** NICS Pension Schemes comparative accrual rates are provided under paragraph 5.13 above. Any pension accrued in a final salary legacy scheme up to 1 April 2022 is protected and will make up part of members' benefits when they retire. When members are moved to the reformed career average scheme (alpha) in 2022 a final salary link will apply, meaning that the salary in the year or years before retirement will be used to calculate the final salary legacy scheme benefits. This will be the case even if members continue to work for many years between 2022 and retirement.

**5.83.** The Department of Finance also intends to issue individual replies directly to respondents and would take this opportunity to thank all those individuals and organisations who submitted responses to the consultation.

# Conclusion and next steps

**6.1** The consultation respondents have raised a number of helpful points and the Department of Finance will use the feedback to help shape the next phase of the remedy, with particular focus on the ill health cohort. A consultation on a further Statutory Rule (SR) covering the implementation of the remedy is expected to be launched later on in the 2022/2023 financial year.

**6.2** After careful consideration of the responses received, the Department of Finance will now proceed with the proposed scheme closure through the Statutory Rule, which will be made and laid in advance of 1 April 2022. This will enable the important first step to end the discrimination identified by the Court in 2018.

# Annex A – List of respondents

| RESPONSES RECEIVED FROM |
|---|
| The Alliance Party |
| The Association of First Division Civil Servants (FDA) |
| The Northern Ireland Public Service Alliance (NIPSA) |
| Community Trade Union |
| Northern Ireland Civil Service Scheme Advisory Board (SAB) |
| Individuals - 19 |

This publication is available at: https://www.finance-ni.gov.uk/consultations/consultation-nics-pension-scheme-prospective-remedy

Any enquiries regarding this publication should be sent to us at: PLCconsultations@finance-ni.gov.uk