

AGE DISCRIMINATION IN 2015 NHS PENSION SCHEME TRANSITIONAL PROTECTION ARRANGEMENTS



Access to good quality, stable and sustainable pension provision has been a long-standing aim for the RCN. It is a key tenet of the RCN's emerging pay strategy and a priority area for the Trade Union Committee

This briefing contains information on the UK Government's [public consultation](#) published in July 2020 in response to the Court of Appeal's ruling on the McCloud age discrimination case in December 2018.

For background information on the McCloud case and its impact on the NHS pension scheme please see the [online briefing](#)

Age Discrimination in the NHS Pension Scheme - Summary

Recent legal cases have ruled that the way in which pension scheme members were moved to the new 2015 Pensions Schemes was discriminatory on grounds of age.

This discriminatory effect now must be removed.

This will mean pension scheme members having to choose how they want their pension to be calculated for the period 1 April 2015 to 31 March 2022.

The choice will be between benefits calculated under the rules of the scheme someone was in immediately before April 2015 or under the 2015 Scheme rules.

HM Government has launched a public consultation to ask WHEN scheme members should be asked to make this choice.

The two options are

- 1) "Immediate choice" – in the 12-24 months from April 2022
- Or
- 2) "Deferred choice" – when the scheme member retires.

No-one is being asked to make this choice yet – the consultation is about when the choice should be offered.

HM Treasury Consultation – Public service pension schemes: changes to the transitional arrangements to the 2015 schemes

The consultation was published by HM Treasury on 16 July 2020¹. It will be open for 12 weeks and will close on 11 October 2020. It sets out proposals for addressing the discrimination identified in the Government policy whereby those closest to retirement remained in their old “legacy” scheme, rather than moving to reformed schemes in 2015. This will involve providing eligible Scheme members with a choice of which set of pension scheme benefits they would like to receive for the remedy period (1/4/15 to 31/3/22) back to 2015. It will apply across all the main public service schemes including the NHS Pension.

Allowing eligible scheme members the choice between legacy and reformed scheme benefits is necessary because some may be better off in the reformed schemes. If the government simply returned all who were not originally protected to their legacy schemes, those members would lose out.

Eligible scheme members who are “in scope” of this remedy proposal are those who were in the NHS Pension Scheme on or before 31/3/12 AND on or after 1/4/15. (Individuals who were in service on or before 31 March 2012 but subsequently left and re-joined will be in scope of these proposals, provided their break in service meets the criteria for continuous service set out in their scheme regulations and was less than five years.)

For the NHS Pension Scheme the “legacy scheme” is the 1995/2008 Scheme and means the section that the scheme member was a member of before they moved into the reformed scheme on or after 1/4/15.

The consultation centres on WHEN this choice should be offered.

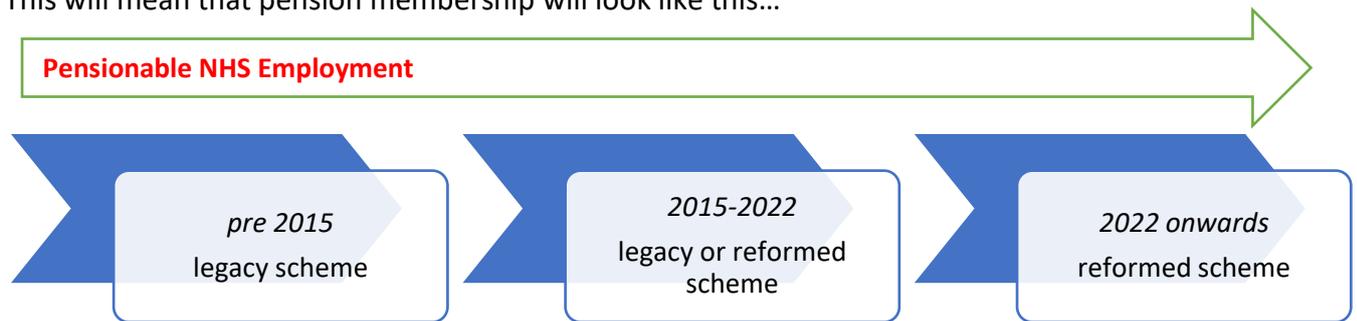
- Immediate choice – with 12-24 months of the end of the remedy period
- Deferred Choice – at the time of retirement.

There are advantages and disadvantages to both options. The RCN wants to hear from you to ensure our response to the consultation covers your opinions and concerns. We are setting up a number of webinars to talk through the two options and seek your views on when you think scheme members should be given the choice.

The consultation states that it is Government intention that all legacy schemes will close on 1/4/22. This means that ALL active scheme members will transfer to the 2015 arrangements on that day for any and all of their future service irrespective of whether they have made a remedy choice or not, or whether they had “full” or “tapered” protection back in 2015.

¹ The Northern Ireland Executive’s Department of Finance launched a similar consultation on changes to Northern Ireland’s public sector pension schemes on 19.8.20. This consultation mirrors the HM Treasury consultation. The consultation will propose changes to Northern Ireland’s HSC Pension Scheme.

This will mean that pension membership will look like this...



A number of technical and administrative matters are also included in the consultation that will be dealt with in the RCN's response, but this briefing and the webinars centre on the timing of "choice". If you have any comments on additional matters, please email them to Nicola.lee@rcn.org.uk by 18th September 2020.

The RCN's key priority is to ensure that members have access to good quality, stable and secure pension arrangements now and in the future.

The options in more detail –

Option 1 - Immediate choice

Under this option members would make an irreversible decision as to whether to accrue benefits in their legacy or reformed pension scheme for the remedy period. For most members this choice would be made in the period after the end of the remedy period. It may be made earlier for some of those who access their pension before 2022.

While scheme managers could not provide forecasts of exactly what each member would receive in the future from either scheme, and could not advise members on which was the "best" choice for them, they would be able to provide some information on the different benefits available under each scheme and to make available tools such as online calculators and models for members to use. These tools could allow members to input assumptions for variables such as future earnings, prices or earnings inflation, expected retirement age, their longevity and possible survivor benefits, to see what benefits they might expect to receive from the different schemes in each scenario on the basis of those assumptions. Ultimately though, these could only be projections based on particular assumptions.



Immediate Choice	
<i>Advantages</i>	<i>Disadvantages</i>
Would be popular with 1995 scheme members, especially those with Special Class and/or Mental health officer status as retirement age would reduce to 60 (55 for SCS/MHO)	More difficult for 2008 section members to assess as retirement ages are very similar but accrual rate is better in the 2015 scheme
Advantageous for those with higher earnings growth in the last years of their career	Final salary not known at the time of choosing – may be lower towards retirement, in which case 2015 scheme would be better
Would give members certainty about their retirement age and pension benefits sooner.	Members may make a decision they subsequently regret at retirement when their career path and final salary are known

Option 2 - Deferred choice (with underpin)

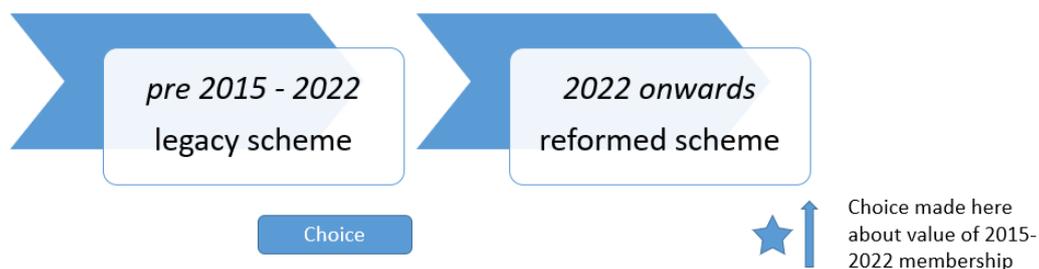
Under the DCU, eligible members would, in the first instance, be deemed to have been accruing benefits in their legacy scheme for the remedy period, regardless of whether they originally had transitional protection or not. When those members are entitled to receive pension benefits under either their legacy or reformed scheme design (e.g. on retirement), they would then be offered a choice of which set of benefits they wished to receive for the remedy period.

In technical terms, individuals would remain members of the legacy scheme, but if they opted for reformed scheme benefits, they would be paid those benefits within the legacy scheme, by means of a 'statutory underpin'. This is essentially a guarantee from Government the chosen benefits will be paid regardless of legacy scheme membership. Because this would be done at the point benefits would be payable, the choice would be based on known benefit entitlements provided by the two schemes, rather than assumptions about what those entitlements might be. This would mean that members

should be clearer as to what they would get under each option and so could more easily choose whichever is better for them.

This option would mean that in 2022 eligible members would be returned to their legacy scheme for the remedy period in the first instance. It would also ensure that those who ultimately are better off in the reformed schemes could still access their reformed scheme benefits at the point they are entitled to receive those benefits.

Under this option scheme members are likely to be able to make an informed decision as they will know what they could receive from each scheme.



Deferred Choice (with Underpin)	
<i>Advantages</i>	<i>Disadvantages</i>
Decisions would be made by scheme members when in possession of all the facts	May lead to uncertainty and confusion either in the short term (not sure what pension is really worth during remedy period) or longer term (when faced with the decision at a point in the future)
Would give administrative time to deal with members' benefits who have retired, deceased or left the scheme in other circumstances during the remedy period	Those members who are subject to pensions taxation (annual and lifetime allowance) may receive retrospective tax charges
	Members may be unclear about their retirement age which may make planning difficult.

FAQS

What if I'm due to retire before I'm given the choice? Your benefits will be reassessed as soon as possible after April 2022

I lost the ability to retire at 60 when I was transitioned to the 2015 scheme 3 years ago but now I find I may be treated as if I was in my old scheme after all. Can I make a retrospective application now? You can apply now but your benefits will be calculated according to the scheme rules at the time of retirement. Your claim cannot be backdated and your benefits

will be reassessed after April 2022. If your pension would be reduced now because you are claiming it “early” under your current scheme rules, yet the legacy rules would have allowed for full benefits – this will be addressed when your situation is reassessed.

Can RCN staff/representatives provide financial advice in regard to my pension or any choice which I may take in the future? No – RCN staff/representatives are not licensed to provide financial advice but we will make advice guides available to help you in your considerations.

Who can provide RCN members with financial advice/support? As part of your membership benefits, [Lighthouse Financial Advice](#) can provide professional financial advice to RCN members.

Nicola Lee, National Officer,
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