In 2014/15, the Government reformed public sector pension schemes in order to protect against unsustainable increases in cost. Members who were within 10 years of retirement were given transitional protection against the introduction of the new benefit structure. These transitional protections were the subject of legal challenges by some members of the Judges and Firefighters’ pension schemes (the "McCloud" and "Sargent" cases respectively), and the Court of Appeal ruled in December 2018 that the transitional protection arrangements unlawfully discriminated against the younger members of these schemes.

The Government has since announced that it will remedy the discrimination arising from the transitional protections in respect of all public service pension schemes. In mid-July 2020, the Government published three consultations covering (1) public service pension schemes in general (the "Main Schemes"), (2) the Local Government Pension Scheme ("LGPS") and (3) the Judicial Pension Scheme.

Summary of the proposals - the main schemes

HM Treasury’s consultation - "Public service pension schemes: changes to the transitional arrangements to the 2015 schemes" - covers the main public service pension schemes which the UK Government is responsible for, including the Civil Service Pension Scheme, NHS Pension Scheme, Teachers’ Pension Scheme, Police Pension Scheme and Firefighters Pension Schemes. The LGPS and Judicial Pension Schemes are the subject of separate consultations, discussed below.

In relation to the Main Schemes, the government is proposing to give affected members
the choice between benefits provided by the "legacy" or "reformed" schemes in respect of their service from 1 April 2015 to 31 March 2022. From April 2022, the Government proposes that a reformed, career average, benefit structure will apply to all members.

The primary question posed in this consultation is when the member choice will be exercisable, either:

a. an immediate choice exercise; or
b. a deferred choice underpin ("DCU")

Under the immediate choice, members would decide which benefits to take shortly after the point of implementation (2022). Under the DCU, members would defer their decision until the point at which they take their pension benefits.

The immediate choice would therefore entail a more substantial correction exercise in the short term. It would also mean members would have to make a decision based on forecasts and assumptions about their future circumstances. The DCU would reduce members' reliance on forecasts and assumptions, but it would also leave members with uncertainty about their benefits up until the point of retirement. It could also be more challenging to design and run.

The timing of the choice will also have tax implications. The tax issues created by the proposed remedies are so complex that they are covered in a separate Appendix to the consultation but some of the key points to note are:

• Under DCU, there are likely to be tax implications for some members at two points in time (the point of implementation in 2022 and the point at which the member exercises their choice in the future).
• However this does not necessarily mean members will be "worse off" from a tax perspective under DCU. This is because the Government proposes that a 4 year statutory time limit for reassessment of tax would operate to limit recovery of underpaid tax to the 4 tax years after the relevant benefits accrued;
• In some circumstances, if DCU were adopted, the Government also proposes to compensate individuals for tax charges incurred as a consequence of the design of the remedies solution.

Summary of the proposals - the local government pension scheme and judicial
pension scheme

The Local Government Pension Scheme (LGPS) and Judicial Pension Scheme (JPS) are the subject of separate consultations.

The LGPS implemented the transitional protections for older members by introducing an underpin, rather than allowing members to remain in the "legacy" scheme. The key difference between the Main Scheme proposals and the LGPS proposals, therefore, is that members will not be offered a choice. Instead the proposal is to extend the underpin to members who did not previously qualify for it on 31 March 2012. And as with the Main Schemes, the Government proposes that all members will accrue benefits on the reformed benefit structure (with no underpin test) from April 2022 onwards.

The consultation seeks views on the draft regulations to give effect to this, as well as a number of technical consequential issues such as the treatment of members with multiple periods of pensionable service and the application of the underpin test in practice.

The Judicial Pension Scheme consultation document seeks views on the modernisation of the "legacy" pension arrangements provided for under the Judicial Pensions and Retirement Act 1993 ("JUPRA") rather than seeking to amend the New Judicial Pension Scheme which was introduced in 2015. Judicial pension arrangements will therefore retain their tax-unregistered status, the move away from which was one of the most contentious aspects of the 2015 reforms. However from 2022 onwards, the accrual basis will be reformed for all members.

What does this mean for public sector employers and contractors?

The three consultations close in early October, following which the Government will respond. It is currently anticipated that the reforms will be implemented in 2022.

In the meantime, the consultations raise the following issues for public sector employers and for contractors who participate in public sector pension schemes under Fair Deal or New Fair Deal obligations:

Public sector employers

The implementation of these remedies will be expensive. This is likely to result in higher
employer contributions. To the extent that employers have alternative options for pension provision, participating in the Main Schemes or LGPS may become less attractive and there may be an increase in proposals to change pension scheme provision.

The communication exercise will also be complex. Further detail will be needed on the respective roles of scheme employers and the scheme administrators in communicating with members about their choices. Employers will be concerned to understand the extent to which they need to support staff in making choices and where liability rests if members make poor decisions.

Linked to this, employers may receive more queries than usual and in some circumstances the implementation of the remedies could give rise to grievances and other disputes. Employers may also be concerned about the tax implications of a member choice for their staff, particularly those with higher earnings or long service.

**Contractors**

In some circumstances, private sector contractors providing outsourced services to the public sector may have legal obligations to participate in public sector schemes or offer comparable pension arrangements under Fair Deal (or New Fair Deal). Contractors will therefore be concerned to understand the implications of these consultations for their workforce. The key questions arising for contractors are:

- As noted above, employer contributions to public sector schemes are likely to increase. Contractors will therefore wish to understand their options for pension provision and may look to exit the public sector schemes where possible. This could trigger financial liabilities which will need careful management.
- Both existing and future contracts will need to be reviewed carefully so that the contractor understands who will bear this additional cost;
- Contractors will also need to understand their role in relation to any member choice exercises. Will they get support from the scheme administrators or will they be expected to facilitate the exercise in any way? And is there potential liability for employers if members later regret their decisions?
- For contractors who operate their own broadly comparable schemes, do they now need to take steps themselves to remove any discrimination issues which arise from having "mirrored" the public sector schemes and if so, are they bound to follow what the public sector schemes are doing?
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