



## DEFENCE POLICE FEDERATION

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### All Members

### Circular 05/21

09<sup>th</sup> February 2021

### GOVERNMENT PROPOSALS REGARDING AGE DISCRIMINATION IN THE CIVIL SERVICE PENSION SCHEMES

Members will recall that in 2018 the Court of Appeal decided that the 2015 changes made to the firefighters' and judges' pension schemes were unlawful. The transitional provisions, which meant that older members remained in the old pre-2015 schemes and younger members had to transfer to new schemes, were age discriminatory. The government subsequently accepted that the same conclusion must apply to all of the public service pension schemes, including the civil service schemes that apply to MDP officers.

The government has just published its consultation response on how it intends to remove the age discrimination. Several documents have been released and if you want to see them in full they can be found at <https://www.gov.uk/government/consultations/public-service-pension-schemes-consultation-changes-to-the-transitional-arrangements-to-the-2015-schemes>. The Chief Secretary to the Treasury made an accompanying written statement to Parliament which you can find at <https://questions-statements.parliament.uk/written-statements/detail/2021-02-04/hcws757>.

This circular summarises the proposals as they apply to the 2015 civil service pension scheme ('alpha') and the older Principal Civil Service Pension Scheme ('PCSPS'). The detail is being considered by the DPF and our lawyers, and I outline the issues that are still likely to be contentious below.

#### Who is affected?

The proposals only apply to the cohort of members who have been discriminated against. Members who joined the service on or after 1 April 2012 were placed in the nuvos Section of the PCSPS when they joined. These members were all transferred to alpha on 1 April 2015, regardless of their age. They were all treated in the same way.

**According to the government, this means that only members who joined before 1 April 2012 are affected.** Their view is that members who joined on or after 1 April 2012 have not been discriminated against. Its proposals therefore only apply to members who joined before that date (and who had not already left the service by 1 April 2015).

We are aware that members who joined between 1 April 2012 and 31 March 2015 feel that they should be treated in the same way as members who joined before April 2012. We will discuss their position with our lawyers.

### **What has to change?**

It is important to recognise from the outset that the Court of Appeal said that the transitional arrangements were unlawful – it did not say that the new schemes were unlawful in their entirety.

The effect of a finding of discrimination is that the disadvantaged class must be treated as favourably as the advantaged class. In this case:

- Younger members who had to transfer to alpha must be permitted to transfer back to the PCSPS if that provides them with better benefits. For MDP officers who were in Classic, Classic Plus or Premium that is likely to be the case in many instances, because the retirement age in these Sections of the PCSPS is significantly lower.
- Older members who were not permitted to join alpha must be given the opportunity to do so. In some cases alpha is better than the PCSPS, particularly for members who intend to work beyond their PCSPS normal retirement age.

The result is that members must be given a choice. Younger members who were excluded from the PCSPS must be given the option of going back, and older members who were not given the option of joining alpha must be given a chance to do so.

### **How will the choice be made?**

This was the main subject matter of the consultation. Everyone recognises that this will be a very difficult choice for members to make.

Two options were considered. The first was to give everyone affected the opportunity to make a once-and-for-all-time decision, probably in 2023. The second was to give them the opportunity when they retire or leave the scheme.

- The first option (“immediate choice”) would make the position of members who are still in service very difficult indeed. They would have to predict how their career will develop over the remainder of their career. For younger members, in particular, that would be impossible.
- We pressed the case for the second option (“deferred choice underpin”) and happily that is what the government has chosen to do. This means that when a member leaves the scheme, either by retiring or by leaving the service, they will be presented with two clear packages and invited to choose one or the other.

It is a sad fact that some members leave the scheme because they die. In

those cases the choice will be made by their family members.

### **Does this apply for the future?**

Remember, the 2015 pension schemes are not themselves unlawful. It is the way they were introduced which was discriminatory.

The government takes the view that the new schemes are still the way forward, and it intends to apply them to everyone at the earliest opportunity. It says that for practical reasons that could not take place before 1 April 2022.

There will not be any transitional protection for older or younger members. No one will be permitted to remain in the PCSPS after that date.

**We are considering with our lawyers if there are grounds for challenging the new schemes, particularly in respect of the alpha normal retirement age which we do not believe is realistic.** We will continue to fight that issue.

As matters stand, the upshot is that:

- Everyone who is still in the service on 1 April 2022 will transfer to the new scheme on that date.
- Anyone who was in service on 31 March 2012 and who was still in service on 1 April 2015 will have to be given a choice, but the choice will apply only to the portion of their pension that they earned between 1 April 2015 and 31 March 2022.
- That will also apply to members who have already retired. They will NOT be required to change their current pension but, if it is a better outcome for them, they will be able to have their pension recalculated on the basis of the scheme which did not apply to them when they retired.

### **What this means**

The affected members' pensions will be calculated in three slices: the pension that they built up until 31 March 2015, the pension that they built up between 1 April 2015 and 31 March 2022, and the pension they build up on and after 1 April 2022. The choice they will be offered will apply to the middle slice.

The choice should be presented in terms of simple numbers: a pension of £X or a pension of £Y, in both cases with an opportunity to take part of the pension as a tax-free lump sum. The choice will not be quite as easy as that however. Members will still have to consider the death benefits and partner's pensions that apply in both packages. That is particularly the case for members who were in Classic: their pension might be higher if they elect for the Classic option, but if they do the pension payable to an unmarried partner, if they have one, would be lower.

You will be able to see how your position develops over the coming years. Each year you will be given a benefit statement showing the alternatives if you choose

one way or the other. You will not have to make any decision until you leave, but the information will help you to decide whether or not to make a decision about, for instance, retiring early.

The main point is that you will not have to make a choice now.

### **What happens in the meanwhile?**

As soon as the administrative processes are in place, all affected members will be returned to their former Section of the PCSPS (that is, Classic, Classic Plus, Premium and nuvos). After the “deferred choice underpin” is introduced, they will be able to choose whether their 2015-2022 pension should be calculated under the rules of their former PCSPS Section or under the alpha rules when they retire (or leave). The deferred choice underpin will not be introduced until 1 October 2023.

### **That causes a particular problem for members who have already retired or who will do so before 1 October 2023. Their position is outlined below.**

That may cause problems in some other cases too:

- Members who were fully-protected will remain in their former Section of the PCSPS until 1 April 2022. By that stage most of them will have retired: full-protection was designed so that all full-protection people could have retired by 1 April 2022 at the latest. Once the deferred choice underpin comes into operation they will still be offered a choice regarding their 2015-2022 slice of pension, even if they have already retired.

For members of the PCSPS, that will not be a problem in most cases, but it could be a problem for Classic members if they die and leave a partner to whom they are not married or who is not their legally-recognised civil partner. Under the Classic rules, a partner will not be paid a pension unless they were legally married or had entered into a legally-recognised civil partnership. Once the option becomes exercisable an unmarried partner will be able to opt for alpha benefits, including a partner’s pension, but that will not happen until 2023.

- Taper-protected members will return to their old scheme if they have already transferred to alpha. They will then have a choice to make when they leave the scheme or retire. They will have to choose whether to have all of their service between 31 March 2015 and 1 April 2022 treated as membership of their PCSPS Section or alpha. They will not be able to split it, some in the old scheme and some in the new.

That could cause a problem for members of Classic. They might be better-off if their pre-transition service is treated as membership of Classic (because Classic pensions are based on final salary, not career-average salary), and their post-transition date service is treated as membership of alpha (because an unmarried partner’s pension is payable).

These cases apart, the proposal to rectify the discrimination after 1 October

2023 is not a problem so long as the member concerned has not retired (as to that, see below). If a member has not retired, they will carry on paying pension contributions at the same rate, and no choice will have to be made until they retire or leave. We have to recognise that sorting out the discrimination is a major task.

### **Members who have already retired**

These members will be given the same choice. But the choice process will commence for everyone from 1 October 2023, including members who have already retired.

**That means that members who have retired or left would have to wait for more than two years, and survive on a pension that is lower than it should be in the interim. The Employment Tribunal has already made a formal declaration that members should be allowed to make a choice now, not in 2023.** Members who are still in service may be prepared to wait until they know what the choice means for them when they eventually retire, but members who have already retired will know which package is better for them and they should be permitted to choose now without waiting.

We are investigating further legal action to enforce the declaration that the Employment Tribunal has made. We will keep you informed of developments.

My CSP may take action to apply the remedy before 1 October 2023 if they are in a position to do so, particularly with regards those who have left on Ill Health Retirement terms.

### **What if I opted out of the pension scheme altogether?**

Some members became so dispirited by the 2015 changes that they opted out of pensions altogether.

The government has listened to the representations made by us and by others. These members will be able to change their mind and opt back in again, at least in some circumstances. They will have to be able to make out a case that they would not have opted out if the changes had not been made.

These members will have to take action to protect their position. Their cases will not be reviewed automatically – they will have to make an application for a review. There is no need for them to take action at this stage.

### **I paid voluntary contributions to buy out the increase to my retirement age – does this mean that these contributions have been wasted?**

Members of alpha were given the option to pay increased contributions for a reduced pension age of 66, 67 or 68, called an “effective pension age” or “EPA” option. The DPF negotiated an arrangement with the MoD, as part of the TACOS settlement, that everyone would have an EPA option automatically applied to them, paid for by the MOD.

The MOD has not honoured that agreement, and its failure to do so is the subject of a separate complaint to the Pensions Ombudsman. The decision has been outstanding for a very long time, but we have been told it is imminent.

If the Ombudsman upholds our complaint, which we expect him to, any EPA contributions that members have made will be returned to them with interest.

### **Who will have to pay for this?**

Alpha has a mechanism built into it, which measures how far the cost of the scheme has deviated from what was expected. If it turns out to be more expensive, then in some cases benefits are reduced or member contributions are increased. If it turns out to be cheaper, then benefits are increased or contributions are reduced. As it happens, when the cost was measured in 2019 it turned out to be cheaper, and alpha benefits should have been improved or contributions should have been reduced.

The government threatened to meet the cost of the age discrimination remedy described above by putting it into this cost control mechanism, meaning that the improvements that should have been introduced last year (with effect from April 2019) would be eliminated. This threat has been challenged in judicial review proceedings which are on hold at the moment.

The government's position is now very unclear, but it appears that it has backed down, in part or entirely. The judicial review has not been withdrawn and will not be until all of the technical detail is known.

But the good news, in the meanwhile, is that the benefits that alpha members have built up since 1 April 2019 should be increased retrospectively.

### **Conclusion**

We and our lawyers are still digesting all of the detail of the government's proposals. On the main issue – immediate choice or deferred choice – the government has reached the conclusion we were pressing for.

As ever, the devil is going to be in the detail, which will eventually be set out in new legislation. We will provide further updates as the position develops.

**Paul Hunter**  
**Southern Area Secretary**  
**& Pension Lead**