



Home Office

# **PUBLIC SERVICE PENSIONS: FIREFIGHTERS' PENSIONS (AMENDMENT) REGULATIONS 2022**

**McCloud / Sargeant remedy: phase one  
(prospective)**

**Government consultation 2021**

This consultation begins on Monday 8 November 2021

This consultation ends on Sunday 2 January 2022

# About the consultation

**To:** This consultation is open to the public.

We are particularly interested to hear from interested parties from the fire sector.

**Duration:** From Monday 8 November 2021 to Sunday 2 January 2022

**Enquiries (including requests for the paper in an alternative format) to:** Fire Pension Team  
Police Workforce and Professionalism Unit  
Home Office  
6<sup>th</sup> Floor, Fry Building  
2 Marsham Street  
London SW1P 4DF  
Email: [Firepensionspublicservicepensionsremedy@homeoffice.gov.uk](mailto:Firepensionspublicservicepensionsremedy@homeoffice.gov.uk)

**How to respond:** Please send your response by Sunday 2 January to:  
Email: [Firepensionspublicservicepensionsremedy@homeoffice.gov.uk](mailto:Firepensionspublicservicepensionsremedy@homeoffice.gov.uk)

Alternatively, you may post your responses to:

Fire Pension Team  
Police Workforce and Professionalism Unit  
Home Office  
6<sup>th</sup> Floor, Fry Building  
2 Marsham Street  
London SW1P 4DF

Email: [Firepensionspublicservicepensionsremedy@homeoffice.gov.uk](mailto:Firepensionspublicservicepensionsremedy@homeoffice.gov.uk)

If you are unable to access an electronic version of the document, please write to the above address and a paper copy will be provided. Alternatively, large print, Braille and alternative language versions of this document are available on request.

**Response paper:** A response to this consultation exercise will be published by the Home Office on gov.uk.

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# 1. Executive summary

- 1.1. In April 2015 the government introduced reformed public service pension schemes. The changes followed a fundamental structural review by the Independent Public Service Pension Commission, chaired by Lord Hutton of Furness. As part of these changes protection was provided to those members who were close to retirement, meaning that they would be allowed to remain in their legacy scheme or gradually transition to the relevant reformed public service pension scheme. For the firefighters' pension scheme this applied to those within fourteen years of their normal pension age. This policy was referred to as transitional protection.
- 1.2. In December 2018, the Court of Appeal found this transitional protection to be discriminatory against younger members in the judicial and firefighters' pension schemes, as transitional protection was only offered to older scheme members. The courts required that this unlawful discrimination be remedied by the government. The government accepted that this applied across all of the public sector pension schemes.
- 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, it was announced in February 2021<sup>1</sup> that affected members and fully protected members will receive at the point they retire a choice of which pension benefits they would prefer to receive in respect of any remediable service rendered between 31 March 2015 and 1 April 2022. This choice is whether the benefits should be modelled on the relevant legacy scheme or reformed scheme. This is known as the Deferred Choice Underpin, or "DCU", and the retrospective remedy. Where members are already receiving pensions, they will be given a choice as soon as practicable. In addition, from 1 April 2022, all those who continue in service will do so as members of the reformed schemes, regardless of age, meaning all members will be treated equally in terms of which pension scheme they are a member. This is known as the prospective remedy.
- 1.4. The Public Service Pensions & Judicial Offices Bill (PSPJO)<sup>2</sup> was introduced to Parliament in July 2021. The Home Office as the Responsible Authority for the firefighters' pension scheme is now considering how best to implement the scheme level changes that will be required when the relevant provisions in the PSPJO are

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<sup>1</sup> <https://www.gov.uk/government/consultations/public-service-pension-schemes-consultation-changes-to-the-transitional-arrangements-to-the-2015-schemes>

<sup>2</sup> <https://bills.parliament.uk/bills/3032>

enacted and come into force. This relates to both "prospective remedy", ensuring all future accrual from 1 April 2022 is in the reformed scheme, and "retrospective remedy", enacting the Deferred Choice Underpin.

- 1.5. This consultation will address those elements of the prospective remedy, including moving all members to the reformed scheme ("the 2015 scheme") from 1 April 2022 and closing the legacy schemes to future accrual from 31 March 2022. This will mean that all members are treated equally in respect of any pensionable service rendered after 31 March 2022. There will be an additional consultation in due course on the Deferred Choice Underpin, to address those elements of the remedy that will be retrospective in effect (i.e. relating to the remedy period, 1 April 2015 to 31 March 2022).
- 1.6. The PSPJO, and the secondary legislation to be made under it, covering both "prospective" and "retrospective" phases of the remedy, remove the transitional protection that the Courts found to be discriminatory based on age; all eligible members, irrespective of age and proximity to NPA, will have accrued benefits in the legacy schemes for the remedy period (1 April 2015 - 31 March 2022).

This consultation will be open for views from **Monday 8 November 2021 to Sunday 2 January 2022.**

## 2. Prospective changes to remove age discrimination

- 2.1. In April 2015 public service pension schemes were reformed; the cost of the legacy schemes had significantly increased over the previous decades, with most of those costs falling to the taxpayer. To protect against unsustainable increases in costs, new schemes were introduced with career average revalued earnings (CARE) design and increased Normal Pension Ages (NPA), alongside the introduction of a cost control mechanism. They were also progressive, providing greater benefits to some lower paid workers. These are the “2015” or “reformed” schemes.
- 2.2. As part of the 2015 reforms, members of the legacy schemes (i.e. those defined benefit pension schemes that had been introduced prior to 1 April 2015 for firefighters), who were aged within 10 years of their Normal Pension Age (NPA) on 31 March 2012, were “fully protected” and allowed to remain in their legacy scheme. Members who, on 31 March 2012, were aged within 10 to 14 years of their NPA were allowed to remain in their legacy scheme for a period on a taper basis. Together, these protections (“full” and “taper”) were referred to as transitional protection.
- 2.3. 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 it was only offered to older scheme members. 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 itself.
- 2.4. In July 2019 the government confirmed that it accepted the Court’s judgment had implications for the other public service schemes that had similar transitional arrangements.
- 2.5. In July 2021 the PSPJO was introduced to Parliament, which, when enacted, will provide that all firefighters who continue in service from 1 April 2022 onwards must do so as members of the reformed scheme. Legacy schemes (i.e. the Firefighters’ Pension Scheme 1992 and Firefighters’ Pension Scheme 2006) will be closed in relation to service after 31 March 2022.
- 2.6. The secondary legislation to be consulted on here will allow provisions for the prospective remedy changes: the move of all members to the reformed scheme from 1 April 2022 and the closure of the legacy schemes to future accrual from 31

March 2022 (the “Prospective Remedy”). This ensures that from 1 April 2022 all active members of the firefighters’ pension scheme will accrue benefits in the same scheme.

- 2.7. There will be an additional consultation on retrospective remedy, enacting the Deferred Choice Underpin, in due course, ahead of coming into force by 1 October 2023.

## 3. Proposals to be consulted on:

- 3.1. This consultation is on the amendments required to implement the Prospective Remedy, including moving all active members to the reformed scheme and making consequential changes to scheme regulations in line with the PSPJO.
- 3.2. A draft set of regulations to ensure all members accrue benefits in the reformed scheme from 1 April 2022 is attached to this consultation.
- 3.3. There are two areas where we are considering whether further amendments to the regulations may be needed, beyond those in the attached draft. The policy intent on those areas is set out below. When responding to this consultation, we ask you to presume that the draft regulations will reflect the policy intent as described.

### Policy intent

- 3.4. *Legacy scheme purchasing of additional benefits.* To ensure that those provisions which allow arrangements for purchasing service in the legacy schemes by means of periodical contributions can continue after 31 March 2022 and that no new legacy scheme arrangements can be entered into after 31 March 2022.
  - 3.4.i. In both firefighters' legacy pension schemes, it is possible for members to purchase additional pensionable service, where they meet certain criteria. They do this by agreement with the scheme manager, and pay for it either as a lump sum or by way of periodical contributions over a period of years, until a set age (typically NPA).
  - 3.4.ii. All such existing agreements will remain in force after 31 March 2022. This is because they do not involve continuing to accrue legacy scheme benefits in relation to service after the closing date; rather, the scheme members concerned are paying in instalments for a previously agreed enhancement to their pre-transfer service. These arrangements are therefore unaffected by the PSPJO or by our draft regulations. It should be noted that members will only be permitted to "complete" existing arrangements entered into before 1 April 2022, subject to meeting any other relevant criteria (such as remaining in active service). Members will not be allowed to enter into arrangements to purchase additional service in the legacy schemes on or after 1 April 2022.

- 3.4.iii In order to give effect to the policy that accrual in the legacy schemes ceases on 31 March 2022, we are considering what provisions might be needed to ensure that no new arrangements can be entered into after 31 March 2022.
- 3.4.iv. We welcome views on whether scheme regulations would already achieve this without amendment.
- 3.5. *Ill-health retirement (IHR)* To ensure that a protected member who applies for IHR before 31 March 2022 where the application is determined in their favour after that date is treated no less favourably than if the application had been determined on that date.
  - 3.5.i. Members who move to the reformed schemes and subsequently become subject to ill-health retirement will be assessed, and receive ill-health benefits, in accordance with the 'one pot' ill-health arrangements under the reformed scheme provisions – this means that cases will become subject to different qualifying criteria than under the legacy scheme rules.
  - 3.5.ii. There will be cases that will be in the process of being considered for ill-health retirement on the date that *all* members will begin to accrue benefits in the reformed scheme - i.e. the ill-health process will begin on or before 31 March 2022 and will not conclude until 1 April 2022 or later.
  - 3.5.iii. The final approach to achieving the policy intent is still under development so our draft regulations do not contain any provision on ill-health retirements. We will use powers provided by PSPJO to amend scheme regulations in this area, in line with the policy intent set out in this document
  - 3.5.iv. Subject to the outcome of this consultation, we will therefore use powers under PSPJO to make regulations protecting the position of ill health retirees whose cases are pending on 31 March next year, and in particular to ensure they are no worse off as a result of a decision being made after that date.
  - 3.5.v. For any ill-health cases that straddle 1 April 2022, the intended policy is the introduction of 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 higher, the 2015 Scheme pension must be increased by the difference between the two.
  - 3.5.vi. The "underpin" will effectively guarantee the member an ill-health pension that is at least as much as the they would receive had they been ill-health retired under the terms of their legacy scheme on 31 March 2022.
  - 3.5.vii. The proposed ill-health underpin will work as follows:
    - 3.5.vii.(i). The member moves to the 2015 Scheme on 1 April 2022 and remains in the scheme until the date of ill-health retirement;

- 3.5.vii.(ii). The one-pot ill-health pension arrangement applies in the same way as it does to any other member who moves to the 2015 Scheme before their ill-health process starts;
- 3.5.vii.(iii). A notional ill-health pension is calculated in accordance with the member's legacy scheme provisions on the basis that they had been ill-health retired on 31 March 2022;
- 3.5.vii.(iv). Ill-health pension (calculated under the one pot arrangement) will be paid from the 2015 Scheme;
- 3.5.vii.(v). Where the notional legacy scheme ill-health pension provides a greater ill-health pension entitlement, the difference between both calculations will be paid to the member as a pension enhancement from the 2015 Scheme;
- 3.5.vii.(vi). Survivor benefits will be paid in accordance with the 2015 Scheme regulations.

## 4. Who do we want to hear from?

- 4.1. This consultation welcomes views from interested parties on the draft regulations and policy intent to implement the Prospective Changes for the McCloud/Sargeant remedy. We are specifically interested in the views of groups that represent firefighters and fire employers, fire employers, and others responsible for implementing the changes.
- 4.2. A link to this consultation has been sent to the following groups:
  - 4.2.i. Association of Police and Crime Commissioners
  - 4.2.ii. Fire Brigades Union
  - 4.2.iii. Fire Leaders' Association
  - 4.2.iv. Fire and Rescue Services Association
  - 4.2.v. Firefighters' Pension Scheme Advisory Board of England
  - 4.2.vi. Local Government Association
  - 4.2.vii. National Fire Chiefs' Council
  - 4.2.viii. The Fire Officers Association
- 4.3. This list is not exhaustive or exclusive and responses are also welcomed from any member of the public with an interest in or views on the subject covered by this consultation.

## 5. Questions for consultation:

**Question 1:** As required by the PSPJO, the draft regulations seek to ensure that the legacy schemes are closed to future accrual from 31 March 2022 and that all members are in the 2015 Scheme in respect of any pensionable service from 1 April 2022. Are the draft regulations sufficient to meet this aim? Do you think there are any changes or additions required to the draft regulations to achieve the stated policy aims?

**Question 2:** The government is proposing that the regulations will be drafted to make additional provision for ill-health retirements that straddle the transfer date. This provision would ensure that a protected member who applies for ill-health retirement before 31 March 2022, and which is determined in their favour after that date, is treated no less favourably than if the application had been determined on that date. Do you have any views on the proposals regarding ill-health retirement cases that straddle 1 April 2022? In particular, do you have any views on how the “underpin” should work or be provided for in the draft regulations?

**Question 3:** The regulations will need to ensure that provisions which allow arrangements for purchasing service in the legacy schemes by periodical contributions, entered into before 1 April 2022, can continue on and after that date and that additional benefit purchasing in the legacy schemes ceases on 31 March 2022. In your view, would existing provisions in the relevant reformed scheme regulations achieve these aims? Alternatively, would additional provisions be needed to achieve this outcome?

**Question 4:** We are interested in understanding whether the scheme regulation amendments will have an impact on people with protected characteristics, beyond those equality considerations undertaken and set out in the EIA undertaken alongside the consultation and PSPJO<sup>3</sup>. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation. Do you think that the draft regulations and policy intent as set out above will have any positive or negative impacts on people with protected characteristics, beyond those already considered? If so, which and why/why not?

**Question 5:** Are there any other areas which you think should be addressed in these regulations to ensure all members are moved to the relevant reformed scheme from 1 April 2022, and that the differential treatment, as identified by the Court of Appeal, is ended?

**Thank you for participating in this consultation.**

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<sup>3</sup> <https://bills.parliament.uk/publications/42336/documents/588>

## 6. Conclusion and next steps

- 6.1. Implementation is subject to the passage of the PSPJO. We would expect to lay regulations, subject to this consultation, in early March, to come into force on 1 April 2022.
- 6.2. All scheme members still accruing benefits in a legacy pension scheme will be automatically moved across to the reformed scheme on 1 April 2022.

# About you

Please use this section to tell us about yourself. Please note you are completing this section **voluntarily**. Please be aware that by responding electronically we will have your email address. Your details will be held securely according to data protection legislation. More information on what data we are collecting, why and how it will be looked after can be found in our privacy information note (PIN) available here:

<https://www.gov.uk/government/consultations/amendments-to-the-firefighters-pension-schemes-in-england-2022/privacy-information-notice-consultation-on-firefighters-pensions-prospective-remedy>

<b>Capacity</b> in which you are responding to this consultation exercise (for example, member of the public)	
If you have <b>previously served</b> within the fire service, please indicate here	
<b>Date</b>	

**If you are a representative of a group**, please tell us the name of the group and give a summary of the people or organisations that you represent. Please also indicate if you agree for your response to be made public and associated with the group.

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# Contact details and how to respond

This consultation will run for 8 weeks, opening on Monday 8 November 2021 and closing on Sunday 2 January 2022.

Please send your response by Sunday 2 January to:

Email: [Firepensionspublicservicepensionsremedy@homeoffice.gov.uk](mailto:Firepensionspublicservicepensionsremedy@homeoffice.gov.uk)

Mail:

Fire Pension Team

Police Workforce and Professionalism Unit

Home Office

6<sup>th</sup> Floor, Fry Building

2 Marsham Street

London SW1P 4DF

## Complaints or comments

If you have any complaints or comments about the consultation process, you should contact the Home Office at the above address.

## Extra copies

Further paper copies of this consultation can be obtained from the above address, and it is also available online.

Alternative format versions of this publication can be requested from:

Email: [Firepensionspublicservicepensionsremedy@homeoffice.gov.uk](mailto:Firepensionspublicservicepensionsremedy@homeoffice.gov.uk)

## Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

## Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities

must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Home Office.

The Home Office will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

## Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles guidance. Please see:

<https://www.gov.uk/government/publications/consultation-principles-guidance>

# Annex A: Draft Equality Impact Assessment (EIA) for Firefighters' Pension Scheme Regulations Prospective Amendments

## 1. Name and outline of policy proposal, guidance or operational activity

The firefighters' pension scheme (England) (Amendment) Regulations 2022.

Consultation on firefighters' pension scheme regulation changes to enact the first phase ("prospective") of the remedy to the McCloud / Sargeant cases.

The first phase of the remedy is to make changes to the scheme regulations, in line with the Public Service Pensions & Judicial Offices Bill, which will close the legacy pension schemes to future accrual from 31 March 2022 and ensure all members who remain in service from 1 April 2022 do so as members of the reformed scheme ("the 2015 Scheme"). This will ensure future equal treatment going forwards.

### **Introduction**

This EIA is a live document, published here in draft. It reflects our careful considering of a range of data and evidence and provides a proportionate response on some of the key considerations made at this stage. This EIA will be kept under review and updated in future to reflect further considerations, including in relation to indirect discrimination.

We welcome feedback on this EIA, to support its development, as we move to amend the pension scheme regulations to enact the first phase of the remedy to make prospective changes to the scheme regulations.

## 2. Summary of the evidence considered in demonstrating due regard to the Public-Sector Equality Duty.

We have used statistical data on the fire and rescue workforce and on pensions collected by the Home Office and pension scheme valuation data from the Government Actuary Department, published here:

<https://www.gov.uk/government/publications/actuarial-valuation-of-the-firefighters-schemes-2016>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/563118/fire-rescue-operational-statistics-201516-hosb1216.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/563118/fire-rescue-operational-statistics-201516-hosb1216.pdf)

<https://www.gov.uk/government/statistics/fire-and-rescue-workforce-and-pensions-statistics-england-april-2020-to-march-2021>

### 3. Purpose

The Public Sector Equality Duty is set out in section 149 of the Equality Act 2010 and requires public authorities, in the exercise of their functions, to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the 2010 Act,
- advance equality of opportunity between people who share a protected characteristic and those who do not, and
- foster good relations between people who share a protected characteristic and those who do not.

This involves having due regard to the need to:

(a) remove or minimise disadvantages suffered by people due to their protected characteristics, and

(b) take steps to meet the needs of people from protected groups where these are different from the needs of other people.

The equality duty covers the nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (gender) and sexual orientation.

HM Treasury has conducted an equality impact assessment, which considers the impact of the overarching policy and the proposed Bill powers and requirements. This is available on <https://bills.parliament.uk/publications/42336/documents/588>. As set out in that assessment, in particular paragraph 1.8, that assessment “does not cover secondary legislation made using powers in this Bill. Separate analysis to consider the impact of changes to scheme regulations (beyond those covered and/or directed by the measures in the Bill) will be produced when the powers to do so are exercised”.

This assessment therefore focusses on the impact of the proposed changes to scheme rules necessary to deliver the Bill requirements, specifically in relation to the first phase of remedy (“prospective”). This closes the 1992 and 2006 firefighters’ pension schemes to future accrual on 31 March 2022 and moves all members who continue in service to the 2015 firefighters’ pension scheme, on 1 April 2022.

The equality duty is an ongoing duty and we will continue to consider and amend this assessment until the final regulations enacting the prospective remedy are made.

A separate assessment will be carried out in due course that focusses on the second phase of remedy (“retrospective”) i.e. ensuring that eligible members have a choice of the benefits they wish to take for the “remedy period” of April 2015 to 31 March 2022.

To note, data used in this assessment is predominantly from the actuarial valuation as at 31 March 2016. More recent data is not currently available, but we will update the data if and where available in formulating the final assessment.

#### **4. Consideration of the duty**

##### **Assessment**

###### *Members in Scope*

Firefighters' Pension Scheme members in scope are those members who started pensionable public service on or before 31 March 2012, had legacy scheme membership during the remedy period and remain an active member of the legacy Firefighters' Pension Scheme on 31 March 2022. The unlawful age discrimination was between:

- those members who received full protection because they were ten years or less from their normal pension age at 1 April 2012,
- those members who received taper transitional protection because they were between ten and fourteen years from their normal pension age at 1 April 2012, and
- those members who did not receive transitional protection because they more than fourteen years from their normal pension age at 1 April 2012.

Phase 1 of the remedy covers Firefighters' Pension Scheme members who received full transitional protection and applies equally to all these members.

###### *Members out of Scope*

Firefighters' Pension Scheme members out of scope are those members who first joined any public service pension scheme after 31 March 2012. These members were ineligible for transitional protection regardless of their age, and therefore were not subject to the age discrimination identified by the Court of Appeal.

##### **Age**

The transitional protection implemented as part of the reforms to public service pension schemes- the reforms based on the recommendations of Lord Hutton - was found by the Court of Appeal to be directly age discriminatory as eligibility for such protection was based on age criteria.

The table below shows the number of fully protected members in the 1992 Scheme and the 2006 Scheme, as at 31 March 2016.

Table 1: Number of protected members in the 1992 and 2006 Schemes (Source: Firefighters' Pension Schemes (England): Actuarial valuation as at 31 March 2016 Report on membership data)

Number of members as at 31 March 2016	1992 Scheme	2006 Scheme	% of total FPS members
<b>Fully Protected Members</b>	5,151	389 (Standard) 671 (Special)	18.8%
<b>Taper Protected members</b>	4,481	526 (Standard) 256 (Special)	16.0%

The proposed changes to Firefighters' Pension Scheme Regulations will be applied to all members regardless of age. The exceptions that allowed certain members who were closer to retirement age to remain in the legacy scheme after 31 March 2015 under the transitional protection arrangement will apply only in respect of service up to 31 March 2022. From 1 April 2022, all active members will be moved to the 2015 Firefighters' Pension Scheme and from that point will build future pension rights on the same basis irrespective of age.

The effects of such transitional protection will be addressed by the second phase of the remedy. All eligible members will be offered a choice over the set of benefits (legacy scheme or new scheme) they wish to receive for any pensionable service during the period 1 April 2015 to 31 March 2022. This is the remedy period in respect of which provisions in the Firefighters' Pension Scheme and similar provisions in other public service pension schemes was found to be discriminatory by the Court of Appeal.

As explored in sections 3.39-3.42 of the EIA undertaken for the PSPJO, we are aware of an issue relating to the different age at which a member can take benefits in the legacy and reformed schemes. We continue to undertake further analysis but at present remain of the view that the limited impacts on these protected groups are justified in the context of the aim of removing earlier discrimination in a manner that respects the rationale for maintaining any transitional protection up to 31 March 2022 and moving all members to a reformed scheme from 1 April 2022.

## **Sex**

The Equalities Act 2010 lists 'sex' as a protected characteristic. Data for the Firefighters' Pension Scheme is also divided by sex. However, it is important to note that sex and gender are two different concepts. A person's gender identity is not always the same as the sex assigned to them at birth, and some people may not identify as having a gender or as non-binary. Gender reassignment is also a protected characteristic under the Equality Act 2010.

The proposed changes will apply to all members regardless of sex and gender identity.

Closing the legacy scheme to future pension accrual applies to all legacy scheme members regardless of sex. From 1 April 2022 all Firefighters' Pension Scheme members, who remain in pensionable service, will only be eligible to do so as a member of the reformed scheme. Moving from a final salary legacy scheme to a career average reformed scheme for future accrual flattens out the added benefit of late career pay progression for higher earners who are more likely to be male. However, in doing so the aim is to ensure equal treatment of all active members for future service.

Firefighters' Pension Scheme actuarial valuation data at 31 March 2016 shows that 95.4% of the active membership are male and 4.6% of the membership are female. This is broadly similar to data in the Home Office *Fire and rescue authorities: operational statistics bulletin for England 2015 to 2016* statistical release, which shows that 5.0% of firefighters at 31 March 2016 (including those who are not members of the Firefighters Pension Scheme) were female. This was 7.5% as at 31 March 2021.

Moving from a final salary legacy scheme to a career average reformed scheme for future accrual from 1 April 2022 may also impact members who take career breaks or work part-time and data tells us that a higher proportion of women do so than men. A change to the overall picture of benefits may impact a member's previous assumptions about when and how they would take their pension. However, changes to pension arrangements by their nature impact differently on those who join or leave the fire service at different times and the proposed changes will apply to all members regardless of sex. We therefore remain of the view that the limited impacts on women are justified and are in the context that, from 1 April 2022, all active members will be in the career average reformed scheme and from that point will accrue future pension benefits on the same basis irrespective of sex.

The table below shows the number of protected members in the 1992 Scheme and the 2006 Scheme, who are female and male, as at 31 March 2016.

Table 2: Number of protected female and male members in the 1992 and 2006 Schemes (Source: Firefighters' Pension Schemes (England): Actuarial valuation as at 31 March 2016)

	1992 Scheme		2006 Scheme	
	Male	Female	Male	Female
Protected members	5,098	53	1,043	17
Protected members (%)	99.0%	1.0%	98.4%	1.6%

	1992 Scheme		2006 Scheme	
	Male	Female	Male	Female
Tapered members	4,359	122	759	23
Tapered members (%)	97.3%	2.7%	97.1%	2.9%

### ***Ethnicity (Race)***

Available data on the Firefighters' Pension Scheme membership only covers members' age and sex. However, fire and rescue authority workforce data is available on Ethnicity. This is regarded as a reasonable proxy given the high percentage of firefighters who are pension scheme members. However, the workforce data on Ethnicity of firefighters does include those who are not members of the Firefighters' Pension Scheme.

The table below shows the Ethnicity of firefighters who declared their ethnicity, using source data as at 31 March 2021, from the *Fire and rescue workforce and pensions statistics: England, April 2020 to March 2021* statistical release.

Table 3: Breakdown of firefighters by Ethnicity as at 31 March 2021 (Source: *Fire and rescue workforce and pensions statistics: England, April 2020 to March 2021* statistical release)

<b>Ethnicity</b>	
White	94.8%
Asian or Asian British	0.7%
Black or Black British	1.3%
Mixed	2.1%
Chinese or "Other"	1.1%

We have considered the potential impact on members from different ethnic backgrounds and the proposed phase one amendments will apply to all members equally, regardless of their ethnicity.

### ***Marriage and Civil Partnership***

There is no available data on this group in relation to firefighters or Firefighters' Pension Scheme membership. However, the Department has considered the potential impact of the proposals on members who have this protected characteristic as part of our analysis on sex.

### ***Disability, Religion and Belief, Gender Reassignment, Sexual Orientation, Pregnancy and Maternity***

Available data on people with these protected characteristics, both in the Firefighters' Pension Scheme and the fire workforce, is limited. However, we have considered the potential equality impacts of the proposed changes for members who share these protected characteristics and those who do not.

Taking into consideration the limited evidence available, the Department does not envisage any unjustified differential impacts that the consequential amendments will cause for members by reference to these protected characteristics.

## **5. Conclusion**

The Department has not identified additional benefits, costs or wider impacts flowing from the consequential Firefighters' Pension Scheme Regulations amendments enacting phase

one of the remedy, as these are consequential in nature and designed to deliver the Bill requirements, which have been assessed by HM Treasury.

The Department has considered the impact of the proposals in context of this duty. To reiterate, the equality duty is an ongoing duty and we will continue to consider and amend this assessment until the final regulation amendments for prospective remedy are laid. We invite respondents to help refine this analysis by contributing further perspectives or identifying where there might be equality impacts to consider. Please see question **four** of the consultation.

## Annex B: Glossary of terms

Term	Explanation
1992 Scheme	The Firefighters' Pension Scheme (England) as established by the Firemen's Pension Scheme Order 1992.
2006 Scheme	The New Firefighters' Pension Scheme (England) as established by the Firefighters' Pension Scheme (England) Order 2006.
2015 Scheme	The Firefighters' Pension Scheme (England) 2015 as established by the Firefighters' Pension Scheme (England) Regulations 2015.
Active member	A member of a firefighters' pension scheme who is actively employed as a firefighter (i.e. they have not retired, resigned or otherwise ended the employment).
Affected member	A scheme member who has suffered <b>age discrimination</b> , i.e. anyone who was employed as a firefighter on both 1 April 2012 and 1 April 2015, but was aged under 45, and thus too young to qualify for full <b>transitional protection</b> , on the former date. It includes <b>taper protected members</b> .
Age discrimination	Treating employees or any other group of people less favourably because of their age. Age discrimination is unlawful unless it can be shown to be a proportionate means of achieving a legitimate aim.
Career average revalued earnings (CARE)	A means of calculating pension entitlement based on a member's average <b>pensionable pay</b> over the course of their employment, adjusted for inflation.
Deferred choice underpin (DCU)	The mechanism by which <b>affected</b> and <b>fully protected members</b> will decide whether their service during the <b>remedy period</b> should be treated as service in their <b>legacy scheme</b> or the <b>2015 Scheme</b> . Such a choice will be made when the member retires or when their pension benefits otherwise first fall to be paid (e.g. if they die before they retire). We will establish that in further regulations which we will consult on next year. It is not covered by these draft regulations.
Fully protected member	A scheme member who was granted full transitional protection in 2015, i.e. anyone who was employed as a firefighter on both 1 April 2012 and 1 April 2015 and was aged 45 or older on the former date.
Legacy scheme	The scheme of which an <b>affected member</b> was a member immediately before 1 April 2015 – i.e. the <b>1992 Scheme</b> or the <b>2006 Scheme</b> .
McCloud, Sargeant, or McCloud / Sargeant	The court cases of McCloud (in relation to judges) and Sargeant (in relation to firefighters) which established that age-based <b>transitional protection</b> amounted to unlawful <b>age discrimination</b> .
Normal pension age (NPA)	The age at which an active member normally becomes entitled to receive their pension.

Term	Explanation
	It is stipulated in scheme rules and can vary from one scheme to another. For instance, the <b>1992 Scheme</b> has an NPA of 55 but the <b>2006</b> and <b>2015 Schemes</b> have an NPA of 60.
<b>Prospective remedy</b>	From 1 April 2022, all those who continue in service will do so as members of the <b>reformed scheme</b> , regardless of age, meaning all members will be treated equally in terms of which pension scheme they are a member.
<b>Remedy period</b>	The period to which the remedy for <b>age discrimination</b> will apply: 1 April 2015 to 31 March 2022, inclusive.
<b>Retrospective remedy</b>	<b>Affected members</b> and <b>fully protected members</b> will receive at the point they retire a choice of which pension benefits that they would prefer to receive in respect of any remediable service rendered between 31 March 2015 and 1 April 2022. This choice is whether the benefits should be modelled on the relevant legacy scheme or reformed scheme. This is known as the <b>Deferred Choice Underpin (DCU)</b> . Where members are already receiving pensions, they will be given a choice as soon as practicable
<b>Retired member</b>	A scheme member who has retired and is receiving pension benefits.
<b>Survivor</b>	An individual entitled to survivor benefits – normally a spouse, partner or child who is entitled to receive scheme benefits after the member dies.
<b>Taper protected member</b>	A scheme member who was offered tapered <b>transitional protection</b> in 2015, i.e. the right to join the 2015 Scheme on a phased basis. This applies to anyone who was employed as a firefighter on both 1 April 2012 and 1 April 2015 and was aged between 41 and 44 on the former date. Taper protected members are also <b>affected members</b> .
<b>Transitional protection</b>	The right to remain as a member of a <b>legacy scheme</b> beyond 31 March 2015.



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