



Home Office

PUBLIC SERVICE PENSIONS: POLICE 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 policing sector.
- Duration:** From Monday 8 November 2021 to Sunday 2 January 2022
- Enquiries (including requests for the paper in an alternative format) to:** Police Pension Team
Police Workforce and Professionalism Unit
Home Office
6th Floor, Fry Building
2 Marsham Street
London SW1P 4DF
Email: Policepensionspublicservicepensionsremedy@homeoffice.gov.uk
- How to respond:** Please send your response by Sunday 2 January to:
Email: Policepensionspublicservicepensionsremedy@homeoffice.gov.uk
- Alternatively, you may post your responses to:
- Police Pension Team
Police Workforce and Professionalism Unit
Home Office
6th Floor, Fry Building
2 Marsham Street
London SW1P 4DF
Email: Policepensionspublicservicepensionsremedy@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 police pension scheme this applied to those within fourteen years of their normal pension age¹. 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 – including to the police pension scheme.
- 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 2021² 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

¹ To note, the 1987 police pension scheme England and Wales has no Normal Pension Age as such. Individual members can have a pension age based on their length of service and linked to, but not necessarily dependent on, age, or they can have a pension age that depends on their rank. This term NPA is used here as shorthand, and for this police scheme means the different ages as used in the design of the original transitional protection.

² <https://www.gov.uk/government/consultations/public-service-pension-schemes-consultation-changes-to-the-transitional-arrangements-to-the-2015-schemes>

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)³ was introduced to Parliament in July 2021. The Home Office as the Responsible Authority for the police 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 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**.

³ <https://bills.parliament.uk/bills/3032>

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 police officers), 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, including the police pension scheme.
- 2.5. In July 2021 the PSPJO was introduced to Parliament, which, when enacted, will provide that all police officers who continue in service from 1 April 2022 onwards must do so as members of the reformed scheme. Legacy schemes (i.e. the Police Pension Scheme 1987 and Police 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 Police 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 three 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 police 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” 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 from 1 April 2022 onwards will be assessed, and receive ill-health benefits, in accordance with the ill-health arrangements under the reformed scheme provisions.

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* active 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. For any ill-health cases that straddle 1 April 2022, the intended policy is that if the application is approved, members will receive an award paid from the reformed 2015 scheme, that is no less generous than if the award had been determined on 31 March 2022 under legacy scheme rules. 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.iv. We consider this policy intent may already be achieved under existing scheme regulations. Under the existing regulations, for members who make an application for ill-health retirement before they transition on 1 April 2022 to the reformed scheme, where that application is determined after the date of their transition, they will be in no worse position than if the application had been determined on 31 March 2022.

- 3.5.v. This is because the existing transitional provisions in the 2015 Regulations take account of the legacy scheme ill-health pension in the calculation of the one-pot ill-health benefits for transition members under the 2015 regulations. As well, the test for ill-health retirement eligibility for members of the reformed scheme may be no more stringent than the test that applied under the legacy schemes.
- 3.5.vi. These provisions currently apply in respect of "transition members". The changes we propose to make to the 2015 Regulations will cause current full protection members to become transition members on 1 April 2022. This means that they will also benefit from the transitional provision on ill-health retirement without any specific amendment on this point.
- 3.5.vii. These provisions also ensure that all ill-health benefits to be paid in respect of a transition member after they transition are paid out of the reformed scheme, albeit in some cases subject to the same rules as applied under the legacy schemes.
- 3.5.viii. However, we will consider further whether any change to existing regulations is needed to ensure that the policy intent set out above is correctly achieved.

3.6. *Interaction of retirement ages between schemes*

- 3.6.i. The legacy and 2015 police pension schemes allow a member to draw their pension at different ages. The 1987 scheme allows many members to draw their 1987 scheme pension before age 55. However, if they do retire before age 55, the rules of the 2015 scheme mean that, in relation to any pension accrued in the 2015 scheme only, they either have to wait until State Pension Age (rather than age 60) to take an unreduced 2015 pension, or wait until the age of 55 and take an actuarially reduced 2015 pension (the reduction being based on State Pension Age). Such reduction is to reflect that the pension is coming into payment early and will be paid for longer.
- 3.6.ii. This is a consequence of the changes to the public sector pension schemes introduced in 2015, arising from the move from a service-based to an age-based pension scheme, and is what occurs under the existing regulations. We have been made aware of concerns that the remedy exacerbates this.

- 3.6.iii. We will give due regard to the interaction of retirement ages between schemes and consider whether any changes are needed to ensure any cohort of police pension scheme members are not unduly disadvantaged, especially having regard to the needs of members from protected groups where these are different from the needs of other members.
- 3.6.iv. Further work is necessary, including to understand the full implications of any potential change in approach to help mitigate this issue.

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 police officers and police employers, police 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. Chief Police Officers' Staff Association
 - 4.2.iii. National Association of Retired Police Officers
 - 4.2.iv. National Police Chiefs' Council
 - 4.2.v. Police Federation of England and Wales
 - 4.2.vi. Police Superintendents' Association
 - 4.2.vii. Pensions Scheme Advisory Board of England and Wales
 - 4.2.viii. The Police Advisory Board for England and Wales
- 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 will consider whether any amendment to the existing 2015 Scheme regulations is required in order to 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 31 March 2022. Do you have any views on the proposals regarding ill-health retirement? In particular, do you think that any amendment to the 2015 Scheme is required to achieve this intent?

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 EQIA undertaken alongside the consultation and PSPJO⁴. 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

⁴ <https://bills.parliament.uk/publications/42336/documents/588>

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.

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-police-pension-schemes-in-england-and-wales-2022/privacy-information-notice-consultation-on-police-pension-scheme-prospective-remedy>

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

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.

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: Policepensionspublicservicepensionsremedy@homeoffice.gov.uk

Mail:

Police Pension Team

Police Workforce and Professionalism Unit

Home Office

6th 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: Policepensionspublicservicepensionsremedy@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 Police Pension Scheme Regulations Prospective Amendments

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

The police pensions (England and Wales) (Amendment) Regulations 2022.

Consultation on police 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 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 police workforce collected by the Home Office and pension scheme valuation data from the Government Actuary Department, published here:

<https://www.gov.uk/government/statistics/police-workforce-open-data-tables>

<https://www.gov.uk/government/statistics/police-workforce-england-and-wales-31-march-2021/police-workforce-england-and-wales-31-march-2021#fn:2>

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

3. Purpose

The Public Sector Equality Duty (PSED) 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 1987 and 2006 police pension schemes to future accrual on 31 March 2022 and moves all members who continue in service to the 2015 police 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

Police 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 Police 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 ordinary pension age⁵ of the 1987 scheme or Normal Pension Age of the 2006 scheme at 1 April 2012, and
- those members who received taper protection because they were between ten to fourteen years from ordinary pension age of the 1987 scheme or Normal Pension Age of the 2006 scheme at 1 April 2012, and
- Those members who did not receive transitional protections because they were more than fourteen years from that age at 1 April 2021.

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

Members out of Scope

Police 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 protected members in the 1987 Scheme and the 2006 Scheme, as at 31 March 2016.

⁵ i.e. from 30 years' pensionable service; age 50 with 25 or more years' pensionable service; or the member's voluntary retirement age (as the 1987 scheme has no Normal Pension Age as such). Individual members can have a pension age based on their length of service and linked to, but not necessarily dependent on, age, or they can have a pension age that depends on their rank.

Table 1: Number of protected members in the 1987 and 2006 Schemes
 (Source: Police Pension Schemes (England & Wales): Actuarial valuation as at 31 March 2016 Report on membership data)

Number of members as at 31 March 2016	1987 Scheme	2006 Scheme	% of total PPS members
Fully Protected Members	29,299	1, 134	25.22%
Taper Protected members	14,048	1,258	12.68%

The proposed changes to Police 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 Police 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 similar provisions in other public service pension schemes was found to be discriminatory by the Court of Appeal.

As above in section 3.6. *interaction of retirement ages between schemes*, we are aware of concerns in relation to the difference in retirement ages between schemes. This issue is explored in sections 3.39-3.42 of the EIA undertaken for the PSPJO and, as signposted there, we are undertaking further analysis as to the potential impact of this in such cases, 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 Equality Act 2010 lists 'sex' as a protected characteristic. Data for the Police Pension Scheme is also divided by sex. That said, it the case 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.

Closing the legacy scheme to future pension accrual applies to all legacy scheme members regardless of sex. From 1 April 2022 all Police Pension Scheme members, who remain in pensionable service, will only be eligible to do so as a member of the new 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.

Police Pension Scheme actuarial valuation data at 31 March 2016 shows that 70.2% of the active membership are male and 29.8% of the membership are female. This is broadly similar to data in the Home Office *Police Workforce, England and Wales* statistical release, which shows that 29.5% of police officers at 31 March 2016 (including those who are not members of the Police Pension Scheme) were female. This was 32.4% 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 that 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 police 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 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 active protected members in the 1987 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 1987 and 2006 Schemes and the number of tapered female and male members in the 1987 and 2006 Schemes (Source: Police Pension Schemes (England & Wales): Actuarial valuation as at 31 March 2016 Report on membership data)

	1987 Scheme		2006 Scheme	
	Male	Female	Male	Female
Protected members	23,154	6,145	808	326
Protected members (%)	79.0%	21.0%	71.3%	28.7%

	1987 Scheme		2006 Scheme	
	Male	Female	Male	Female
Tapered members	10,076	3,972	797	461
Tapered members (%)	71.7%	28.3%	63.4%	36.6%

Ethnicity (Race)

Available data on the Police Pension Scheme membership only covers members' age and sex. However, police workforce data is available on the protected characteristics of Ethnicity. This is regarded as a reasonable proxy given the high percentage of police officers who are pension scheme members. However, the workforce data on Ethnicity of police officers does include those who are not members of the Police Pension Scheme.

The table below shows the Ethnicity of police officers who declared their ethnicity, using data as at 31 March 2021, from the *Police Workforce, England and Wales* statistical release.

Table 3: Breakdown of police officers by Ethnicity as at 31 March 2021 (Source: Home Office *Police Workforce, England and Wales* statistical release 31 March 2021)

Ethnicity	
White	92.4%
Asian or Asian British	3.4%
Black or Black British	1.3%
Mixed	2.3%
"Other"	0.6%

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 the police workforce or Police 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 Police Pension Scheme and the police 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 Police 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
1987 Scheme	The Police Pension Scheme 1987 as established by the Police Pension Act 1976 / the Police Pension Regulations 1987 ⁶ .
2006 Scheme	The Police Pension Scheme (England and Wales) 2006 as established by the Police Pensions Regulations 2006 ⁷ .
2015 (reformed) Scheme	The Police Pension Scheme (England and Wales) 2015 as established by the Police Pensions Regulations 2015 ⁸ .
Active member	A member of a police pension scheme who is actively employed as a police officer (i.e. they have not retired, resigned or otherwise ended the employment).
Affected member	A scheme member who has suffered age discrimination , i.e. anyone who was employed as a police officer on both 1 April 2012 and 1 April 2015, but did not qualify for full transitional protection , on the former date. It includes taper protected members .
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 pensionable pay over the course of their employment, adjusted for inflation.
Deferred choice underpin (DCU)	The mechanism by which affected and fully protected members will decide whether their service during the remedy period should be treated as service in their legacy scheme or the 2015 Scheme . 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.
Final salary	A means of calculating pension entitlement based on a member's pensionable pay at the point they retire.
Fully protected member	A scheme member who was granted full transitional protection in 2015.

⁶ [The Police Pensions Regulations 1987 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

⁷ [The Police Pensions Regulations 2006 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

⁸ [The Police Pensions Regulations 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

Term	Explanation
Legacy scheme	The scheme of which an affected or fully protected member was a member immediately before 1 April 2015 – i.e. the 1987 Scheme or the 2006 Scheme .
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 transitional protection amounted to unlawful age discrimination .
Normal pension age (NPA)	The age at which an active member normally becomes entitled to receive their pension. It is typically stipulated in scheme rules and can vary from one scheme to another. For instance, the 1987 Scheme has no NPA, the 2006 Scheme has an NPA of 55 and the 2015 Scheme has an NPA of 60.
Prospective remedy	From 1 April 2022, all those who continue in service will do so as members of the reformed scheme , regardless of age, meaning all members will be treated equally in terms of which pension scheme they are a member.
Remedy period	The period to which the remedy for age discrimination will apply: 1 April 2015 to 31 March 2022, inclusive.
Retired member	A scheme member who has retired and is receiving pension benefits.
Retrospective remedy	Affected members and fully protected members 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 Deferred Choice Underpin (DCU) . Where members are already receiving pensions, they will be given a choice as soon as practicable
Transitional protection	The right to remain as a member of a legacy scheme in 2015, the criteria for which are as set out in the Reform Design Framework ⁹ . The courts have held that granting this right on the basis of age was unlawful.
Taper protected member	A scheme member who was offered tapered transitional protection in 2015, i.e. the right to join the 2015 Scheme on a phased basis. Taper protected members are also affected members .

⁹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/117692/reform-design-framework.pdf



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