



Home Office

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

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

Response to the consultation

March 2022

This consultation relates to the amendments to the Firefighters' Pension Scheme (England) Regulations 2014 associated with the Police and Firefighters' Pension Schemes (Amendment) Regulations 2022.

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1. Introduction and contact details

- 1.1. This document is the post-consultation report for the consultation paper 'Public Service Pensions: Firefighters' Pensions (Amendment) Regulations 2022', which was published on Monday 8 November 2021 and closed to responses on Sunday 2 January 2022.

It covers:

- the background to the consultation
- a summary of the consultation responses
- the government response to the specific questions and matters raised by respondents, and next steps

Further copies of this report and the consultation response can be obtained by contacting the address below:

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This report is also available at <https://www.gov.uk/government/consultations/amendments-to-the-firefighters-pension-schemes-in-england-2022>.

Alternative format versions of this publication can be requested from:

Firepensionspublicservicepensionsremedy@homeoffice.gov.uk

Complaints or comments

If you have any questions about the consultation process, please email the Home Office at Firepensionspublicservicepensionsremedy@homeoffice.gov.uk or the address above.

2. Executive summary

- 2.1. Between 8 November 2021 and 2 January 2022, the Home Office (as the Responsible Authority for the Firefighters' Pension Schemes in England) consulted on proposed amendments to the Firefighters' Pension Scheme (England) Regulations 2014 ('the 2014 Regulations') as part of the first phase of the McCloud remedy. The consultation sought views on proposed amendments to scheme rules which will move all members (including those formerly protected) to the 2015 scheme ('the reformed scheme') on 1 April 2022 and close the legacy schemes to future accrual from 31 March 2022.
- 2.2. The Home Office received a total of 25 responses to the consultation. A high proportion of responses were from Fire and Rescue Authorities (FRAs), groups that represent firefighter pension scheme members, employers and administrators. A small number were from individual members of the firefighters' pension scheme. One response was received after the closing date of the consultation, but this was still considered. Most responses were relevant to the five questions asked, and a wide range of opinions were received. Some respondents did not address the questions raised in the consultation while expressing concern about the proposals to move all active members to the reformed scheme. As well as addressing the questions raised in the consultation, respondents expressed views on scheme-related matters which were considered to be outside the scope of this consultation. This document sets out the Home Office response to commentaries received on the changes that were subject to this consultation.
- 2.3. Taking into account responses to the consultation, we are confident the amendments to the 2014 Regulations will achieve the policy aim of implementing the first phase of the McCloud remedy. All remaining legacy scheme members will be moved to the reformed scheme from 1 April 2022 and the legacy schemes will be closed to future accrual from 31 March 2022. This will ensure all members are treated equally in respect of any pensionable service accrued after 31 March 2022. Therefore, the Home Office will remove the transitional protection that the courts found to be discriminatory in the McCloud and Sargeant cases in line with policy made by HM Treasury relating to public service pension schemes. Consequently, the Home Office will have made the changes that will be required once the Public Service Pensions and Judicial Offices Bill ('the PSPJO Bill') receives Royal Assent.

3. Background

- 3.1 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 ('NPA'). This policy was referred to as transitional protection.
- 3.2 In December 2018, the Court of Appeal found this transitional protection to be discriminatory against younger members in the judicial and firefighters' pension schemes in the McCloud and Sargeant cases, as transitional protection was only offered to older scheme members. The courts required that this unlawful discrimination be remedied by the government, and the government accepted that this applied across all of the main public service pension schemes.
- 3.3 In order to remedy the discrimination, HM Treasury held an open consultation to consider options to address the discrimination. Following the close of the consultation in October 2020, it was announced in February 2021¹ 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 accrued from 1 April 2015 to 31 March 2022. This choice is whether the benefits should be modelled on the relevant legacy scheme or reformed scheme provisions. 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 of. This is known as the prospective remedy.
- 3.4 The PSPJO Bill² was introduced to Parliament in July 2021 to implement changes in public service pension schemes to remedy the discrimination identified by the McCloud judgment. The PSPJO Bill, 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).
- 3.5 The remedy will be delivered in two phases, prospective (phase one) and retrospective (phase two), delivered through primary and secondary legislation.
- 3.6 This consultation, which was published on Monday 8 November 2021 and closed on Sunday 2 January 2022, addressed the prospective remedy, namely, moving all members to the reformed scheme from 1 April 2022 and closing the legacy

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

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

schemes to future accrual on 31 March 2022. This will mean that all members are treated equally in respect of any pensionable service accrued after 31 March 2022.

- 3.7 During the consultation period, the Home Office engaged with the Firefighters' Pensions (England) Scheme Advisory Board ('the SAB'), holding a session in early December 2021. The SAB was established in 2015, comprising fire sector employer and member representatives, and part of its role is to provide advice to the Home Secretary on the merits of making changes to firefighters' pension schemes. The aim of the session was to ensure stakeholders were given the opportunity to directly engage with the Home Office on the scheme level changes, to ensure the draft regulations would achieve the stated policy aim. The aim of the session was also to give stakeholders an opportunity to seek clarification on any aspects of the consultation and the draft regulations.
- 3.8 Implementation of the second part of the remedy also requires changes to scheme regulations. A further set of draft regulations is under development and there will be an additional consultation in due course covering the retrospective phase. This will address those elements of the remedy that will be retrospective in effect and relate to the remedy period (1 April 2015 to 31 March 2022).

4. Summary of responses

4.1 The Home Office received responses to the consultation from 25 respondents. Most of the responses received were from FRAs, individual scheme members, member and employer representatives or other stakeholder groups. 20 respondents addressed at least one of the five questions raised in the consultation. These respondents represented a range of views on the government’s policy to address the discrimination identified in the McCloud/Sargeant cases and views on the scheme level changes proposed by the Home Office.

4.2 It is important to point out that the summary of findings is based on the relatively small number of responses received and that they are not necessarily representative of the views of all stakeholders affected by the proposed amendments to scheme rules. The Home Office considered the responses and identified the main points of support and challenge raised by respondents. We outline the Home Office’s response to these points below in section 5.

Questions for consultation	Responses received
Question 1: As required by the PSPJO Bill, 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?	19
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?	19
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?	20
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 PSPJO Bill. 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?	19
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?	19

5. Responses to specific questions

Question 1: As required by the PSPJO Bill, 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?

There were 19 responses received to question 1 of the consultation. Of these, 16 respondents agreed that the proposed changes would achieve the policy intention as set out in the consultation document.

Two respondents took the view that the proposed regulations would ensure that the policy intention would mostly be met. However, they made two suggestions, namely, that the index adjustment link to the closing balance as of 31 March 2022 should be disabled, and that the date for which an active member's account is established under Regulation 35 of the 2014 Regulations should be defined as being 1 April 2022 for those in scope for remedy. One of these respondents highlighted the need to consider the interaction of closing the 2006 scheme with future remedy in respect of the ongoing Matthews litigation for those individuals who will have an entitlement to become special members.

One response highlighted that fully protected members of the legacy 1992 scheme who transition to the reformed scheme on 1 April 2022 would effectively be increasing their retirement age to 60, which would be an increase of between five and ten years. This respondent's concerns were that this may have adverse implications for some firefighters, in particular females, with regards to their ability to maintain fitness standards for active firefighting.

While agreeing that the proposed changes would achieve the policy intention, one respondent asked for the amending legislation to be laid earlier than 1 April 2022 to allow employing FRAs to make the necessary changes to member records.

Government response

After considering the responses to the consultation, the government is content that the proposed changes will achieve the policy intention and sufficient time has been allowed to make the necessary preparations to internal processes. The legislative amendments will come into effect on 1 April 2022.

With regards to the comments on indexation adjustment, the proposed changes are expected to only impact fully protected members of the legacy firefighters' pension schemes. These individuals will not have had an earlier opportunity to join membership of the reformed scheme and, as such, will not have any pre-1 April 2022 service in the reformed scheme. The interaction of indexation and full remedy will be considered further as part of the retrospective remedy.

The response with regards to maintaining firefighter fitness standards falls outside the scope of this question and will be addressed as part of the response to question 4, which relates to equality considerations. Any proposals to provide further remedy to

those individuals who will become entitled to join the modified section of the 2006 scheme by virtue of the Matthews litigation will be addressed as part of a separate consultation. Any service accrued by these individuals after 31 March 2022 will also be in the reformed scheme.

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?

There were 19 responses received to question 2 of the consultation.

12 respondents explicitly supported the idea that transitional protection is needed for ill-health retirement cases which are being processed under the ill-health arrangements during the point where all remaining legacy scheme members are moved across to the reformed scheme on 1 April 2022, when they would then become subject to the reformed scheme ill-health provisions (under the single source arrangements). This would avoid any detrimental or unfair treatment for members who would have been entitled to higher ill-health benefits under their legacy scheme than those provided under the reformed scheme.

One respondent stated they had no views on ill-health claims that straddle over the transfer date and no suggestions on how best to apply the underpin.

13 responses highlighted a need for the scheme amendments to set out clearly how an affected member would be determined as eligible to be considered for the ill-health underpin. Four respondents raised the matter of how any enhancement would be treated for the purposes of survivor benefits. Five respondents emphasised that ill-health processes can be protracted and that these delays need to be accounted for in the ill-health underpin arrangements. Five responses also referred to the interaction of the ill-health underpin with injury awards paid under the terms of the 2006 Firefighters' Compensation Scheme, and reference was also made to a special cohort of retained firefighters who retain a historic protection to be treated as a Whole Time Equivalent regular firefighter for the purposes of injury award entitlements.

Four responses also highlighted that some active firefighters may currently be suffering from progressive health issues that manifest into poor health over a longer period, in particular, mental health conditions including Post Traumatic Stress Disorder. These cases may not be at the stage where an employing fire and rescue authority will make a decision to refer to an Independent Qualified Medical Practitioner before the 1 April 2022. Also, four responses suggested that the ill-health retirement process should be deemed to be pending or in progress if an individual's last day of performing the normal duties of their role pre-dated 1 April 2022. A small number of responses also asked for clarity on enhancements paid under the ill-health underpin, when the member attains NPA in the legacy scheme.

One response also highlighted that any enhancement paid under transitional ill-health arrangements should be subject to the appropriate commutation provisions of the

legacy scheme. This is to ensure that affected members can commute in accordance with the beneficial legacy 1992 scheme commutation factors, and to avoid higher tier awards from being commuted which is currently prohibited in the legacy 1992 scheme rules.

There was also a number of additional matters raised that sit outside the scope of the consultation proposals regarding assumed deficiencies in the current ill-health arrangements, these included:

- difficulties in making medical assessments on mental health conditions
- difficulties associated with medical practitioners making future assessments on a member's health in relation to certain medical conditions
- how the ill-health underpin will interact with the Deferred Choice Underpin (DCU) approach to remedy

These matters have not been addressed, as they relate to the fundamentals of the existing ill-health arrangements and are not directly linked to, or created by, the ill-health retirement changes within the scope of this consultation. Additionally, the interaction of DCU and the ill-health underpin will be addressed as part of the retrospective remedy which will be implemented by October 2023.

Government response

After considering all consultation responses, the government is content to proceed with making changes to the reformed scheme to ensure that where an ill-health decision is pending on 1 April 2022, the member moving across to the reformed scheme will not be placed in a worse position than they would have been in had a decision been made on 31 March 2022 under the relevant legacy scheme.

Following further analysis of the existing ill-health arrangements for legacy 1992 and 2006 scheme members who transition into the reformed scheme, it is the government's position that there is only one scenario where a member who transitions on 1 April 2022 with an ill-health decision pending could be placed in a worse position. This is due to the operation of the already established 'single source' ill-health arrangements. This would be where a legacy 1992 scheme member moves across to the reformed scheme and does not meet the qualifying criteria for ill-health retirement in the reformed scheme but would have met the corresponding criteria under the legacy 1992 scheme. This may be possible due to the differences in the NPA between the schemes which ill-health cases are tested against. These NPAs are age 55 in the legacy 1992 scheme and age 60 in the reformed scheme. In short, under the legacy 1992 scheme the issue is whether incapacity continues until age 55, whereas under the reformed scheme it is whether incapacity continues until age 60.

To avoid any such members being placed in a worse position, changes will be made to the reformed scheme rules. This means that for members where the ill-health assessment process began on or before 31 March 2022, the member is assessed for ill-health retirement against an NPA of 55. This will mean that there should be no cases where an affected member would have qualified for ill-health retirement under the legacy 1992 scheme but does not qualify under the reformed scheme.

There is no need to make any corresponding changes for legacy 2006 scheme members as both schemes have an NPA of 60.

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?

There were 20 responses received to question 3 of the consultation. 12 respondents expressed the view that the policy to restrict members from making new elections after 31 March 2022 to purchase additional service under their respective legacy schemes was appropriate for meeting the stated policy aims. One respondent stated they had no comments on this particular question.

One response raised concerns about transitional members who are returned to their legacy scheme in October 2023 and may claim that they would have made an election to purchase additional service in their legacy scheme had they not been unlawfully moved to the reformed scheme. This particular point falls outside the scope of this consultation and will be considered as part of the retrospective aspects of remedy.

One respondent raised a point relating to the impact of this proposal on retained firefighters who should have had an opportunity to join the modified section of the legacy 2006 scheme, also known as the 'Modified Scheme'. Again, this falls outside the scope of the current consultation. The impact of the O'Brien ruling (in O'Brien v the Ministry of Justice) on retained firefighters' pension entitlement is a separate ongoing matter that is being considered by the Home Office. One respondent made a general comment that the proposal as set out in the consultation document may be subject to legal challenge. However, no further detail was given with respect to the grounds on which such a challenge would be based.

Seven respondents raised points that also fell outside the scope of this consultation question. For example, requests to allow tapered and non-protected members who are currently members of the reformed scheme to be able to make new elections to purchase additional service in their legacy schemes were raised. This specific point falls outside the scope of the current consultation but will be considered as part of the retrospective aspects of remedy.

Government response

After considering the consultation responses, the government is content to proceed with the intended policy to prohibit new member elections to purchase additional service under their legacy scheme after the 31 March 2022.

The proposed changes do not impact non-protected or taper protected members who will already have transitioned to the reformed scheme prior to 1 April 2022. The option for these cohorts to purchase service when they are returned to their legacy schemes for the remedy period will be considered as part of retrospective remedy changes which are expected to come into force in October 2023. Where a member has made an election to purchase additional service in the legacy scheme on or before 31 March 2022 and has opted to pay the costs by means of periodical contributions, they will be permitted to continue making these contributions in respect of their election. New

elections on or after 1 April 2022 to purchase additional service in the legacy schemes are prohibited. To achieve this, a minor amendment to paragraph 31 of Schedule 2 to the 2014 Regulations (pensionable service under the legacy 2006 scheme) has been made to ensure that no new elections to purchase additional service under may be made on or after 1 April 2022.

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 PSPJO Bill. 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?

There were 19 responses received to question 4 of the consultation. Ten of the respondents indicated that they could not identify additional positive or negative impacts on people with protected characteristics arising from the proposed changes beyond those already considered.

There were points raised in respect of potential additional equality considerations. Two respondents raised a concern about the interaction of retirement ages in the legacy 1992 scheme and the reformed scheme. This concern relates to the case where a member of the legacy scheme is moved to the reformed scheme on 1 April 2015 and so will not be able access any reformed scheme benefits until they reach age 55 when they can take their actuarially reduced benefits. Seven respondents made reference to the higher NPA in the reformed scheme compared to that in the legacy 1992 scheme and highlighted concerns about the ability of some members, in particular female firefighters, to retain the required fitness and physical strength standards to continue in their role as an operational firefighter.

Government response

After considering the consultation responses, the government is satisfied that there are no additional equality impacts created by implementing the proposed changes as set out in the consultation document.

All legacy scheme members affected by the proposed changes are expected to be those who have been afforded full protection when the reformed scheme was introduced in 2015. As such, all members affected by the changes will already have reached at least age 55 by 1 April 2022 and will be able to retire and take their full benefits accrued under their legacy scheme at any time.

Those who remain in employment after 31 March 2022 will accrue further pension benefits in the reformed scheme going forward and will have to continue to maintain fitness standards in the same way as they would have had they remained in their legacy scheme for the post 31 March 2022 period. The proposed changes do not impact this. Affected members will be able to take any benefits accrued in the reformed scheme when they reach age 60 or take actuarially reduced benefits from

any time between age 55 and 60. Whilst the reformed scheme has an NPA of 60, it does have provision to allow members to retire from age 55 with an actuarially reduced pension to reflect the pension being paid early should the member decide to do so.

Additionally, the Fire and Rescue National Framework for England sets out priorities and objectives for FRAs. FRAs must have regard to the framework in carrying out their functions, and Her Majesty's Inspectorate for the Constabulary and Fire and Rescue Service will take account of the National Framework in its inspections.

The National Framework requires all FRAs to have a process of fitness assessment and development to ensure that no individual automatically faces dismissal if they fall below fitness standards and cannot be deployed operationally. The process also provides all operational personnel with support to maintain their fitness for the duration of their career, and a commitment to provide a minimum of six months of development and support for firefighters if they fail a fitness assessment. The National Framework also requires that FRAs ensure appropriate reference of firefighters to occupational health providers where necessary, and to identify reasonable adjustment or redeployment in role where it appears the medical condition does not allow a return to operational duties.

Should a firefighter fail a fitness assessment through no fault of their own, their employing FRA will consider whether there are any reasonable adjustments that can be made or find suitable alternative employment, and if that is not possible, and the employee is at least aged 55, consider an authority-initiated retirement. This will ensure that no firefighter should face a situation where they are forced to retire without access to a fair pension where they lose fitness through no fault of their own.

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?

There were 19 responses received to question 5 of the consultation.

Nine responses confirmed that they could not identify any other areas which needed to be addressed in these regulations to ensure all members are moved to the relevant reformed scheme from 1 April 2022 and that the discrimination, as identified by the Court of Appeal, is addressed.

Ten respondents provided additional areas that they thought should be addressed in these regulations. However, not all of these fell within the scope of this consultation.

Six responses highlighted concerns for members of the legacy 1992 scheme who transition to the reformed scheme on 1 April 2022 and subsequently become entitled to their legacy 1992 scheme benefits before age 55 whilst having no immediate access to their reformed scheme benefits. This would create the situation where the member would either have to remain in employment until age 55 so that they can take both their legacy 1992 scheme benefits and reformed scheme benefits at the same time, with the latter being subject to actuarial reductions to reflect that it would be paid earlier than NPA (age 60) or take their legacy 1992 scheme benefits whilst deferring their reformed scheme benefits.

One response highlighted that any decision made by the member to take their legacy 1992 scheme benefits would impact the value of their retirement lump sum as this is based on actuarial commutation factors which decrease as the member's age at retirement increases. Also, one response highlighted concerns over the delays in implementing the retrospective aspects of remedy for those members who have already retired ('immediate detriment cases') and those who retire between now and October 2023.

Government response

After considering the consultation responses, the government is content that there are no further areas to be addressed to achieve the policy intention.

The changes that will be implemented on 1 April 2022 are expected to impact those legacy scheme members who were afforded full transitional protections when the reformed scheme was introduced in April 2015. Fully protected members will be transitioned to the reformed scheme on 1 April 2022, whereas all non-protected members and taper protected members will already have transitioned either on the 1 April 2015 or at the end of their taper protection period.

On this basis, all fully protected members who transition to the reformed scheme on 1 April 2022 will already have attained their respective legacy scheme's NPAs (age 55 for the legacy 1992 scheme, and age 60 for the legacy 2006 scheme). As such, these members will be able to retire and take their full legacy scheme benefits at any time after this date. These members will also be able to take any reformed scheme benefits accrued after 1 April 2022, but in the case of person who is not yet 60 this will be subject to actuarial reduction to reflect that the benefits are being paid before the 2015 scheme's NPA of 60 years.

The other points raised in respect of immediate detriment cases and the interaction of the different scheme retirement ages do not fall within the scope of this consultation. These will be considered under the retrospective aspects of remedy.

6. Conclusion and next steps

- 6.1. The Home Office will amend the 2014 Regulations as part of the first phase of the remedy, ensuring that the legacy schemes are closed to future accrual on 31 March 2022 and that all members are transitioned into the reformed scheme in respect of any pensionable service from 1 April 2022. This is necessary to comply with the PSPJO Bill.
- 6.2. Implementation is subject to the passage of the PSPJO Bill. Subject to this Bill being approved and receiving Royal Assent, the Home Office will take steps to lay finalised regulations to move members to the reformed schemes to come into force on 1 April 2022. All scheme members still accruing benefits in a legacy pension schemes will be automatically transitioned to the reformed scheme on 1 April 2022. We will continue to work with the Local Government Association (LGA) to support FRAs, as the employers and pension scheme managers, in communicating with scheme members on the pension changes. There is no action that members need to take in advance.
- 6.3. The Home Office will also continue work on phase two of the remedy, the retrospective remedy, including making preparations to implement the DCU, ahead of consulting formally on the relevant amendments to scheme regulations.

Thank you to those who responded to the consultation.

7. 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 Cabinet Office Consultation Principles 2018. Please see:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

Annex A



Home Office

Firefighters' Pension Scheme Regulations Prospective Amendments 2022

Equality Impact Assessment (EIA)

This EIA relates to the amendments to the Firefighters' Pension Scheme (England) Regulations 2014 associated with the Police and Firefighters' Pension Schemes (Amendment) Regulations 2022.

Chapter One: Introduction

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

This Equality Impact Assessment (EIA) relates to the amendments to the Firefighters' Pension Scheme (England) Regulations 2014 ('the 2014 Regulations') associated with the Police and Firefighters' Pension Schemes (Amendment) Regulations 2022. The Home Office on 8 November 2021 consulted on firefighters' pension scheme regulation changes as part of the first phase ('prospective') of the remedy for the discrimination identified in 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 and Judicial Offices (PSPJO) 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 2015 scheme ('the reformed scheme'). This will ensure future equal treatment going forwards.

HM Treasury (HMT) published a policy impact assessment and an equality impact assessment which consider the impact of the proposed powers and requirements of the PSPJO Bill. These are available on <https://bills.parliament.uk/publications/42336/documents/588> and should be considered alongside "HM Treasury Public service pension schemes: changes to the transitional arrangement to the 2015 schemes: consultation". As set out in the HMT EIA, in particular paragraph 1.8, that assessment "does not cover secondary legislation made using powers in this Bill". This assessment, therefore, focusses on the impact of the proposed changes to scheme rules necessary to deliver the Bill's requirements, specifically in relation to the first phase of remedy ('prospective'). The equality duty is an ongoing duty and we have considered and amended this assessment as 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 the remedy ('retrospective'). This second phase will ensure that eligible members have a choice of the benefits they wish to take for the 'remedy period' of 1 April 2015 to 31 March 2022. To note, data used in this assessment is predominantly from the actuarial valuation as at 31 March 2016. This is most recent data available to us to consider the impact of the government's policy decision to close legacy schemes to future accrual with effect from 1 April 2022.

Introduction

This EIA explains how we have given due consideration to and complied with our equality duties under the Equality Act 2010 throughout the development of our policy proposals to make changes to the firefighters' pension scheme regulations in line with the PSPJO Bill. This Bill 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 EIA has been updated following the consultation on the draft 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 membership of firefighters' pension schemes in England collected by the Government Actuary's Department (GAD) for the purposes of the 31 March 2016 actuarial valuation as detailed in the report "Firefighters' Pension Schemes (England): Actuarial valuation as at 31 March 2016: Report on membership data" of 28 February 2019, published here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/818779/Fire_England_Data_report_final_28_Feb_2019.pdf.

Whilst data was collected for the purposes of the 31 March 2016 actuarial valuation, some aspects of the data were incomplete and/or unreliable for certain elements of the calculations. It was not possible to fully resolve those data issues in the timescale required for the valuation, and, therefore, assumptions were required in respect of incomplete and/or unreliable individual member records. Further information on the steps taken to address data issues can be found in the above report.

We also used statistical data on the fire and rescue workforce, published here:

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>

The data to be used for the next actuarial valuation, as at 31 March 2020, has not yet been finalised, but we can update our assessment to reflect this more recent data if and where it becomes available.

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
- 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.

This EIA should be read alongside the initial Public Service Pensions: Firefighters' Pensions (Amendment) Regulations 2022 consultation document.

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.

4. Consideration of the duty

Assessment

This EIA covers one policy area: the closure of the firefighters' final salary legacy pension schemes in England, with all future accrual to be in the career average 2015 reformed scheme.

Background

When public service pension reforms were introduced in 2015, the government agreed to allow those closest to their retirement age to stay in their legacy schemes. These arrangements were referred to as transitional protection arrangements.

For the firefighters' pension schemes in England, this meant:

- A. Active members who, on 1 April 2012, were in the legacy 1992 scheme or legacy 2006 scheme (special) and aged 45 or over would remain in the legacy 1992 scheme or legacy 2006 scheme (special).
- B. Active members who, on 1 April 2012, were in the legacy 2006 scheme (standard) and aged 50 or over would remain in the legacy 2006 scheme (standard).
- C. Active members who, as of 1 April 2012, were in one of the legacy schemes and were within four years of qualifying for full protection have limited protection so that, on average, for every month closer to qualifying for full protection, they gain about 53 days of protection in their then current scheme. At the end of their protected period they transferred into the reformed scheme.

In this EIA, members in categories A and B above are referred to as 'protected' members and members in category C are referred to as 'tapered protected' members.

Members affected by the April 2022 changes

The members affected by the changes being made from April 2022 are expected to be the protected members. These will be all those members that were within 10 years from their normal pension age in the legacy 1992 and 2006 schemes as on 1 April 2012. These changes are not expected to impact on members who were not protected and those who were afforded taper protection.

Chapter Two: Equality Impact Analysis: Closure of the Final Salary Schemes

The firefighters' final salary pension schemes will be closed to future accrual on 31 March 2022. All members of firefighters' pension schemes in England who remain in active service from 1 April 2022 will do so as members of the reformed scheme. This will ensure that future pension provision provides equal treatment in terms of the scheme design available to members of firefighters' pension schemes.

The final salary link, as originally set out in the Public Sector Pensions Act 2013, will be retained. This means that all the accrual in a final salary legacy scheme will be calculated in relation to a member's final salary when they retire or otherwise leave the scheme, regardless of how many years' service was spent in the reformed schemes, and not their salary at the point when they left the legacy scheme. This will ensure that, from 1 April 2022, all active members are treated equally in respect of the pension scheme designs offered for future service after the discrimination has been addressed. It would be unfair for some members, and not others, to remain in the legacy scheme beyond this date.

Approach and Data

Drawing on available data, this EIA focuses on the closure of the legacy schemes. The level of analysis is proportionate to the availability of data and to the Department's considered view about the relative risk of impact to each of the protected groups. With that in mind, analysis is provided under the main provisions of scheme design with regard to age, sex and, where data is available, ethnicity.

The Department's position in respect of other protected groups is detailed separately. The analysis in the following paragraphs in respect of "age" and "sex" has been carried out using membership data relating to firefighters' pension schemes provided to GAD for the purposes of the 31 March 2016 actuarial valuation and covers the entirety of membership across England. For the other protected characteristics under the Equality Act 2010, the Home Office does not hold complete or up-to-date data. However, data for the whole of the Fire and Rescue Service (England) workforce is available and has been used. We understand that the participation rate in the firefighters' pension schemes is high, so this represents a reasonable approximation to the membership of the scheme.

The table below sets out the number of protected members in the legacy 1992 and 2006 schemes.

Table 1: Number of protected members in the legacy 1992 and 2006 schemes (Source: 31 March 2016 actuarial valuation data)

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

The table below sets out the number of protected members as at 31 March 2016.

Table 2: Number of protected members as at 31 March 2016 (Source: 31 March 2016 actuarial valuation data)

	1992 scheme	2006 scheme (standard)	2006 scheme (special)	Total
Protected members in service as at 31 March 2016	5,151	389	671	6,212
<i>Proportion of total number of protected members</i>	83%	6%	11%	

We also show below the total number of active members in the firefighters' pension schemes in England as at 31 March 2016.

Table 3: Number of active members in the firefighters' pension schemes in England as at 31 March 2016 (Source: 31 March 2016 actuarial valuation data)

		Number of members	Proportion of the membership (based on number of members)
Eligible for Transitional Protection remedy	<i>Protected members</i>	6,212	19%
	<i>Tapered protected members</i>	5,262	16%
	<i>Unprotected members</i>	15,846	48%
	Total	27,320	83%
Not eligible for Transitional Protection remedy		5,666	17%
Total		32,985	100%

The table above shows that 19% of the active membership of the scheme as at 31 March 2016 were protected members.

We acknowledge that this data is from a date which does not reflect the specific point in time at which the measure will come into place. We expect that most of the protected members identified as at 31 March 2016 will have retired by 1 April 2022, such that much less than 19% of the active scheme members at that date are, in reality, impacted. However, since we cannot be sure which protected members will remain in active service at 1 April 2022, we consider it is appropriate to use this data for this equality analysis, particularly as there is currently no alternative. The data to be used for the next actuarial valuation, as at 31 March 2020, has not yet been finalised, but we can update our assessment to reflect this more recent data once it becomes available.

Equality Impact Analysis: Age

This section sets out our analysis of the equality impacts of the policy decision to close the legacy schemes to future accrual with effect from 1 April 2022 on the protected characteristic of age as identified in the Equality Act 2010.

Introduction

As previously outlined, the courts determined that the transitional protection element of the 2015 public service pension scheme reforms treated those members who were closest to retirement more favourably than younger members and this amounted to direct age discrimination.

The government's policy decision to no longer permit any members to accrue benefits in the legacy schemes after 31 March 2022 is one aspect of the approach that is to be taken to address the age discrimination identified. All tapered protected and unprotected members would have been accruing benefits in the reformed scheme by this point, so this decision only impacts protected members. Given that the policy decision only impacts protected members, it is to be expected that those affected will be older than the general scheme population. However, this is deemed necessary to remove the age discrimination that had previously been identified by the courts, and to ensure that all members are treated equitably from 31 March 2022.

Analysis

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

The following table sets out the age profile of all active members in the firefighters' pension schemes in England, as well as the age profile of the protected members only as at 31 March 2016.

Table 4: Age profile of all active members in the firefighters' pension schemes in England, as well as the age profile of the protected members only, as at 31 March 2016 (Source: 31 March 2016 actuarial valuation data)

Age as at 31 March 2016	Active membership as at 31 March 2016	Membership with full protection as at 31 March 2016
16-19	-	-
20-24	2%	-
25-29	7%	-
30-34	13%	-
35-39	16%	-
40-44	18%	-
45-49	24%	12%
50-54	16%	68%
55-59	4%	17%
60 and above	1%	3%
Total	32,985	6,212

The following table sets out which scheme the 6,212 protected members as at 31 March 2016, within each age group, are accruing benefits in.

Table 5: Data on which scheme the 6,212 protected members as at 31 March 2016, within each age group, are accruing benefits in (Source: 31 March 2016 actuarial valuation data)

Age as at 31 March 2016	Percentage in 1992 scheme	Percentage in 2006 scheme (standard)	Percentage in 2006 scheme (special)	Total
45-49	95%	-	5%	12%
50-54	92%	1%	7%	68%
55-59	52%	25%	23%	17%
60 and above	7%	39%	54%	3%

To be clear, the total percentage shown represents the percentage of the 6,212 fully protected members as at 31 March 2016 who fall within that age range. The percentages shown under the 1992 and 2006 scheme columns represent the percentage of fully protected members in that age group within the respective schemes.

This analysis identifies that protected members are older than the general scheme population and most protected members are between ages 50 to 54 as at 31 March 2016. From age 45 to 59, the majority of protected members are accruing benefits in the legacy 1992 scheme. This is expected as it is consistent with the opening date of the legacy 2006 scheme (standard).

Interaction of Retirement Ages

Protected members are older than the general active member population. The courts found that continuing to provide protected members with access to the legacy schemes beyond 31 March 2022 would continue the discrimination against younger members who are not offered these terms as shown by the data. Therefore, the Home Office believes that applying a policy that removes the provision of favourable treatment to older members compared to other members of the scheme is justified.

The proposed changes to the 2014 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 reformed scheme and from that point will build future pension rights on the same basis irrespective of age.

We are aware of the interaction of the different retirement ages between legacy and reformed schemes. This matter is explored in sections 3.39-3.42 of the EIA undertaken for the PSPJO Bill, and the government is aware that concerns have been raised in relation to this. The position is a consequence of the move from a purely service-based pension scheme to one that is also based on age. The 'two part' nature of the benefits and the different points at which they are paid was set out in 2013 as part of the long-term reforms. If a change were to be introduced, we would need to be confident that it would be fair to all pension scheme members. Further work is necessary, including to understand the full implications of any potential change in approach to help mitigate this. We are still considering if there is a way of addressing the overarching concern about the disparity between the age at which members can retire in the legacy and 2015 schemes without carving out a group based on a particular characteristic (otherwise there would be a risk of reintroducing the discrimination identified in McCloud). We remain of the view that no change should be included in this set of regulations, as they are focussed on amendments that are critical to allow the schemes to function given the requirement in the PSPJO Bill for legacy schemes to be closed from 1 April 2022.

In the second phase of the remedy, all eligible members will be offered a choice over the set of benefits (legacy scheme or reformed scheme benefits) 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.

Equality Impact Analysis: Sex

This section sets out our analysis of the equality impacts of the policy decision to close the legacy schemes to future accrual with effect from 1 April 2022 on the protected characteristic of sex as identified in the Equality Act 2010.

Introduction

In determining that the transitional protection arrangements discriminated on the grounds of age, the courts also concluded that if older members in a scheme were more likely to be male, providing older members with preferential terms amounted to indirect sex discrimination. The government's policy decision to no longer permit any members to

accrue benefits in the legacy schemes after 1 April 2022 is one aspect of addressing the age discrimination identified, and in turn, the indirect sex discrimination where it too applies.

We have analysed below the split of the protected members by sex.

The Equality Act 2010 lists 'sex' as a protected characteristic. Data for the membership of the firefighters' pension schemes in England is also available 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, and this is examined later in this EIA.

Analysis

The following table sets out the sex profile of the members of the firefighters' pension schemes in England as well as the sex profile of the protected members.

Table 6: Sex profiles of the members in the firefighters' pension schemes in England and protected members (Source: 31 March 2016 actuarial valuation data)

	Active membership as at 31 March 2016	Protected members as at 31 March 2016
Males	95%	99%
Females	5%	1%
Total	32,985	6,212

This analysis identifies that the percentage of the protected members who are male is greater than the percentage of the overall scheme population who are male.

The following table sets out the percentage of male and female protected members in each scheme as at 31 March 2016.

Table 7: Percentage of male and female protected members in each scheme as at 31 March 2016 (Source: 31 March 2016 actuarial valuation data)

	1992 scheme	2006 scheme (standard)	2006 scheme (special)	All protected members
Males	99%	98%	99%	99%
Females	1%	2%	1%	1%
Total	5,151	389	671	6,212

This analysis identifies that the percentage of protected members who are males and accruing benefits in the legacy 1992 and 2006 schemes broadly mirror the overall percentage of protected members. Protected members are more likely to be male.

Analysis: Sex and Age

The table below shows the percentage of males in both the overall scheme population and the protected members population at each age range.

Table 8: Percentage of males in both the overall scheme population and the protected members population at each age range (Source: 31 March 2016 actuarial valuation data)

Age as at 31 March 2016	Active male membership as at 31 March 2016	Protected male members as at 31 March 2016
16-19	91%	-
20-24	95%	-
25-29	93%	-
30-34	93%	-
35-39	93%	-
40-44	95%	-
45-49	97%	98%
50-54	99%	99%
55-59	99%	99%
60 and above	99%	99%

This analysis identifies that the percentage of the active member population that is male is, generally speaking, greater at older ages. Also, it identifies that the percentage of protected members who are males is broadly consistent with the overall scheme population at those ages. This supports the comment earlier that protected members are more likely to be male.

Analysis: Sex

Moving from a final salary legacy scheme to a career average reformed scheme for future accrual decreases the added benefit of late career pay progression.

This means that the policy decision to no longer permit protected members to accrue benefits in the legacy schemes from 1 April 2022 is likely to have a negative impact on those who, in future years, achieve higher salary progression, rather than those with lower salary progression.

However, it is worth noting that the impact of this is likely to be limited given that:

- for protected members who continue accruing benefits beyond 31 March 2022, their benefits in the legacy scheme will be calculated based on their 'final salary' when they leave the reformed scheme, rather than as at 31 March 2022
- it would seem unlikely many protected members would experience significant pay progression after 31 March 2022, given how close they are to their retirement age

It has been suggested that, across the UK's public service pension schemes, a larger proportion of males reach higher salary bands than females, and therefore, of those who may be negatively impacted by this policy decision, a higher proportion will be male.

We have set out below the split by the groups of members in the overall active member population and the protected members' population as at 31 March 2016. Some of the data supplied by the administrators was not split between the individual roles, so the information has been collated into two groups – the first group to show the Firefighters up to Station Manager roles and the second to show the Group Manager roles and above.

Table 9: Split by the groups of members in the overall active member population and the protected members' population as at 31 March 2016 (Source: 31 March 2016 actuarial valuation data)

Role as at 31 March 2016	Active membership as at 31 March 2016	% of overall active membership	Protected members as at 31 March 2016	% of protected membership**
Firefighter up to Station Manager	32,267	98%	5,880	95%
Group Manager and above	527	2%	254	4%
Unknown	191	-	78	1%
Total	32,985		6,212	

**Percentages shown are to the nearest 1%. Therefore, percentages which are less than 0.5% have not been shown above, but it is noted that excluding these may mean the percentages do not sum to 100%.

This analysis identifies that the highest proportion of all active members and protected members are in the Firefighters up to Station Manager roles. We have provided below the proportion of the membership at each group (as described above) that is male in both populations.

Table 10: Proportion of the membership at each group (as described above) that is male in both populations (Source: 31 March 2016 actuarial valuation data)

Role as at 31 March 2016	Active male membership as at 31 March 2016	Protected male members as at 31 March 2016
Firefighter up to Station Manager	95%	99%
Group Manager and above	98%	100%
Unknown	97%	95%

This analysis identifies that, overall, in the protected member only population, there appears to be little evidence to suggest that higher earners are more likely to be male. This analysis highlights that higher earning protected members are no more likely to be male compared with lower earning protected members.

Analysis: Sex and Employment Status

In England, women are more likely to work part-time than men³. It is therefore worth considering the equalities impact of those who work part-time within this protected characteristic.

The analysis below provides a split of the scheme membership into those working part-time and those who work full-time.

Table 11: Split of the scheme membership into those working part-time and those who work full-time (Source: 31 March 2016 actuarial valuation data)

	Active membership as at 31 March 2016	All protected members as at 31 March 2016
Full-time	71%	84% (5247)
Part-time***	29%	16% (965)
Total	32,985	6,212

* Part-time includes retained members (personnel contracted to be available for agreed periods of time for firefighting purposes)

** Please note that a member has been classed as 'part-time' if the part-time indicator provided in the data for the purposes of the 31 March 2016 actuarial valuation, was recorded as "Y". All other members have been assumed to be full time. Please note that rigorous checks were not carried out on the part-time indicators provided.

Of those 965 protected members working part-time as at 31 March 2016, around 1% are female and accruing benefits in the legacy 2006 scheme (special).

This analysis identifies that as at 31 March 2016, the percentage of the protected members working part-time was lower than the percentage of the overall scheme population working part-time. Of those protected members working part-time, the percentage that are female (~1%) is much lower than the percentage of active population that is female (5%) but broadly similar to the percentage of the protected member population that is female (1%).

Based on the above analysis, protected members are less likely to work part-time. This was to be expected since protected members are older and part-time working has become more common in recent years.

Cumulative Impact

Closing the legacy scheme to future pension accrual applies to all legacy scheme members regardless of sex. From 1 April 2022, all members of firefighters' pension schemes in England 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.

³<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/howdothejobsmenandwomendoaffectthegenderpaygap/2017-10-06>

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. Therefore, we remain of the view that the limited impacts on women are justified 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. To allow a group of members to continue to accrue benefits in their legacy scheme beyond 31 March 2022 would introduce new discrimination.

Equality Impact Analysis: Other Protected Characteristics

This section sets out our analysis of the equality impacts of the policy decision to close the legacy schemes to future accrual with effect after 31 March 2022 on the other protected characteristics as identified in the Equality Act 2010.

The Home Office does not hold complete or up-to-date data on the other protected characteristics under the Equality Act 2010 in relation to members of the firefighters' pension schemes in England. For the remaining protected characteristics, where possible, we have used data for the Fire and Rescue Services (England) workforce as a whole. This seemed a reasonable approximation given the scheme participation of the workforce in 2016 was of the order of 96% (see footnote 5). It should be noted that a sizeable proportion of the population chose not to provide personal information, so the number of firefighters with the relevant protected characteristics may be underreported.

Although we have considered the potential impact on the remaining equality groups below, the proposed changes will apply to all members regardless of equality category.

Disability

There is no available data on this protected characteristic in relation to the membership of the firefighters' pension schemes in England or Fire and Rescue Services (England) workforce.

Race/Ethnicity

Available data on the membership of the firefighters' pension schemes in England 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 schemes.

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 12: 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)

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

To analyse the differential impact between persons of different ethnicity groups of the policy decision to close the legacy schemes to future accrual with effect from 1 April 2022, we have used information in the following source:

Data as at 2013 and 2021:

fire-statistics-data-tables-fire1104-051121.xlsx (live.com)

Cumulative Impact

From the data source above, it can be seen that the proportion of firefighters who are classified as in an ethnic minority has increased slightly between 2013 and 2021 (3.7% in 2013 to 4.7% in 2021). This might suggest that protected members are perhaps less likely to be in an ethnic minority compared with the general active member population. We have further 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 protected characteristic in relation to the membership of the firefighters' pension schemes in England or Fire and Rescue Services (England) workforce.

Cumulative Impact

The Department has considered the potential impact of the proposals on members who have this protected characteristic as part of our analysis on sex.

Religion or Belief

To analyse the differential impact between persons of different religion or beliefs of the policy decision to close the legacy schemes to future accrual with effect from 1 April 2022, we have used information in the following source:

Data as at 2013 and 2021:

fire-statistics-data-tables-fire1106-211021.xlsx (live.com)

From this, it can be seen that the proportion of firefighters who are classified as a particular religion is broadly unchanged between 2013 and 2021.

This might suggest that protected members are no more likely to be in a particular religious group compared with the general active member population.

Gender reassignment

There is no available data on these protected characteristics in relation to the membership of the firefighters' pension schemes in England or Fire and Rescue Services (England) workforce.

Pregnancy and maternity

There is no available data on these protected characteristics in relation to the membership of the firefighters' pension schemes in England or Fire and Rescue Services (England) workforce.

Sexual orientation

To analyse the differential impact between persons of different sexual orientation of the policy decision to close the legacy schemes to future accrual with effect from 1 April 2022, we have used information in the following source:

Data as at 2013 and 2021:

fire-statistics-data-tables-fire1107-211021.xlsx (live.com)

From this it can be seen that the proportion of firefighters that identify as either bisexual or homosexual has increased slightly between 2013 and 2021 (2.8% in 2013 to 3.4% in 2021).

This might suggest that protected members are less likely to be either bisexual or homosexual compared with the general active member population.

Cumulative Impact

The Home Office has considered the potential equality impacts of the proposed changes for members who share the protected characteristics of religion or belief, gender reassignment, pregnancy and maternity, and sexual orientation and those who do not. Taking into consideration the limited evidence available, the Home Office does not envisage any unjustified differential impacts that the amendments will cause for members by reference to protected characteristics.

5. Conclusion

The Home Office has not identified additional benefits, costs or wider impacts following from the amendments to the 2014 Regulations associated with the Police and Firefighters' Pension Schemes (Amendment) Regulations 2022, as these are consequential in nature and designed to deliver the PSPJO Bill's requirements, which have been assessed by HM Treasury.

The Home Office considered the impact of the proposals in context of this duty and sought feedback on the EIA associated with the PSPJO Bill. This was done to support policy development and help refine the initial equality analysis by identifying where there might be equality impacts to consider. The Home Office has considered carefully the impact of

closing the final salary schemes for future accrual on 1 April 2022 in respect of each of the following protected characteristics: age, gender, ethnicity, disability, religion or belief, gender reassignment, pregnancy and maternity, sexual orientation, gender reassignment, and marriage/civil partnership. We have concluded that disproportionate adverse impact on current and future members is unlikely. Therefore, we have concluded that amendments to enact the first phase of the remedy represents a proportionate means of achieving a legitimate aim.

The main equality matter raised by stakeholders emerging during the analysis process and the Department's position on this are below.

There were consultation responses that made reference to the higher NPA in the reformed scheme compared to that in the legacy 1992 scheme and highlighted concerns about the ability of some members, in particular female firefighters, to retain the required fitness and physical strength standards to continue in their role as an operational firefighter.

All legacy scheme members affected by the proposed changes are expected to be the protected members when the reformed scheme was introduced in 2015. As such, all members affected by the changes will already have attained at least age 55 by the 1 April 2022 and will be able to retire and take their full benefits accrued under their legacy scheme at any time.

Those who remain in employment after 31 March 2022 will accrue further pension benefits in the reformed scheme going forward and will have to continue to maintain fitness standards in the same way as they would have had they remained in their legacy scheme for the post 31 March 2022 period. The proposed changes do not impact this.

Affected members will be able to take any benefits accrued in the reformed scheme when they attain age 60 or take actuarially reduced benefits from any time between age 55 and 60. Whilst the reformed scheme has an NPA of 60, it does have provision to allow members to retire from age 55 with an actuarially reduced pension to reflect the pension being paid early should the member decide to do so.

Additionally, the Fire and Rescue National Framework for England sets out priorities and objectives for Fire and Rescue Authorities (FRAs). FRAs must have regard to the framework in carrying out their functions, and Her Majesty's Inspectorate for the Constabulary and Fire and Rescue Service will take account of the National Framework in its inspections.

The National Framework requires all fire and rescue authorities to have a process of fitness assessment and development to ensure that no individual automatically faces dismissal if they fall below fitness standards and cannot be deployed operationally. The process also provides all operational personnel with support to maintain their fitness for the duration of their career, and a commitment to provide a minimum of six months of development and support for firefighters if they fail a fitness test. The National Framework also requires that fire and rescue authorities ensure appropriate reference of firefighters to occupational health providers where necessary, and to identify reasonable adjustment or redeployment in role where it appears the medical condition does not allow a return to operational duties.

Should a firefighter fail a fitness test through no fault of their own, their employing FRA will consider whether there are any reasonable adjustments that can be made or find suitable

alternative employment, and if that is not possible, and the employee is at least aged 55, consider an authority-initiated retirement.

This will ensure that no firefighter should face a situation where they are forced to retire without access to a fair pension where they lose fitness through no fault of their own.

Annex B: Glossary of terms

Term	Explanation
1992 scheme	The Firefighters' Pension Scheme 1992 as established by the Firefighters' Pension Scheme Order 1992 ⁴ .
2006 scheme	The Firefighters' Pension Scheme (England) 2006 as established by the Firefighters' Pension Scheme (England) Order 2006 ⁵ .
2015 (reformed) scheme	The Firefighters' Pension Scheme (England) 2015 as established by the Firefighters' Pension Scheme (England) Regulations 2014 ⁶ .
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 age discrimination, i.e. anyone who was employed as a firefighter 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 (reformed) 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.

⁴ The Firemen's Pension Scheme Order 1992 (legislation.gov.uk) - The Scheme was renamed the "Firefighters' Pension Scheme" once The Firefighters' Pension Scheme (England and Scotland) Order 2004 (legislation.gov.uk) came into force.

⁵ The Firefighters' Pension Scheme (England) Order 2006 (legislation.gov.uk)

⁶ The Firefighters' Pension Scheme (England) Regulations 2014 (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 – either 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 legacy 1992 scheme has no NPA, the legacy 2006 Scheme has an NPA of 55 and the 2015 (reformed) 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
Special member	A firefighter who is a member of the modified section of the legacy 2006 scheme.
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 ⁷ . 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, meaning the right to join the 2015 (reformed) scheme on a phased basis. Taper protected members are also affected members.

⁷https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/117692/reform-design-framework.pdf



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This publication is available at <https://www.gov.uk/government/consultations/amendments-to-the-firefighters-pension-schemes-in-england-2022>.

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