



HM Treasury

The Public Service Pensions
(Exercise of Powers,
Compensation and Information)
Directions 2022:
Equality Impact Assessment

December 2022

The Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022

Equality Impact Assessment



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Contents

Chapter 1	Introduction	2
Chapter 2	Equality impact overview	6
Chapter 3	Equality impact analysis: Directions	10

Chapter 1

Introduction

Equality impact analysis

Purpose

- 1.1 This document records the equality impact analysis undertaken for the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022, to enable Ministers to fulfil the requirements placed on them by the Public Sector Equality Duty¹ (PSED) as set out in section 149 of the Equality Act 2010.²
- 1.2 The analysis builds on the equality analysis previously undertaken by HM Treasury, Ministry of Justice (MoJ), and the Department for Levelling Up, Housing and Communities (DLUHC).
- 1.3 The government has reached the conclusions set out in this assessment based on consideration of previous equality impact assessments, including at the consultation and consultation response stages, in addition to other available data, as discussed in the annexes. The previous assessments undertaken are set out in Table 1 below.

Approach

- 1.4 Chapter 3 of this EqIA considers the provisions set out in the Directions and considers each against their impact on individuals with protected characteristics.

Data

McCloud Judgment

- 1.5 Public service pension schemes hold data on sex and age - the key characteristics for pension calculations. This data is based on the public service pension schemes' 2016 actuarial valuation data and considers the active membership as at 31 March 2016. It was provided to the Government Actuary's Department (GAD) by public service pension schemes covering the NHS (England and Wales), Teachers (England and Wales), Police (England and Wales), Firefighters (England), Civil Service (Great Britain) and Armed Forces

¹ www.equalityhumanrights.com/sites/default/files/meeting_the_duty_in_policy_and_decision-making.pdf

² www.gov.uk/guidance/equality-act-2010-guidance

(UK). GAD have produced summarised versions of this data, to be found in Annex A.

Background

McCloud judgment

- 1.6 In April 2015³ 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 design and increased Normal Pension Ages alongside the introduction of a cost control mechanism. They were also progressive, providing greater benefits to some lower paid workers.
- 1.7 As part of the 2015 reforms, those members of the unfunded⁴ schemes who were within 10 years of their Normal Pension Age (NPA)⁵ on 1 April 2012 and had active status⁶ on 31 March 2012 and 31 March 2015 remained in their legacy pension schemes for service from 1 April 2015. This transitional protection was provided following discussions with member representatives and was intended to protect and give certainty to people who were close to retirement. In December 2018 the Court of Appeal found that this part of the reforms unlawfully discriminated against younger members of the judicial and firefighters' pension schemes in particular, as transitional protection was only offered to older scheme members.⁷ The courts required that this unlawful discrimination be remedied by the government.
- 1.8 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.⁸
- 1.9 Between 16 July and 11 October 2020, HM Treasury consulted on two options (an immediate choice exercise or a Deferred Choice Underpin (DCU)) to

³ April 2014 for the Local Government Pension Scheme (LGPS) for England and Wales.

⁴ The LGPSs for England & Wales, Scotland and Northern Ireland took a different approach and provided a pension benefit underpin for members within 10 years of their NPA on 31 March 2012 that offered the better of final salary or career average accrual for service from the date of reform up to the member's NPA.

⁵ The 1987 police pension scheme England and Wales and the equivalent schemes for Scotland and Northern Ireland have 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 as shorthand throughout this document, and for these police schemes means the different ages as used in the design of the original transitional protection.

⁶ Or a member who, on either or both of those dates, was entitled to return to active status in a legacy scheme within 5 years of leaving with a pension award, who then returned to active status within that 5 year period and whose pensionable service on re-joining was treated as continuous with their previous service.

⁷ Lord Chancellor and another v McCloud and others, Secretary of State for the Home Department v Sargeant and others [2018] EWCA Civ 2844.

⁸ <https://questions-statements.parliament.uk/written-statements/detail/2019-07-15/HCWS1725>

remedy discrimination that arose when reformed unfunded public service pension schemes were introduced.⁹

- 1.10 Different remedy models are needed to resolve the discrimination in the judiciary and Local Government Pension Schemes because of the unique characteristics of these schemes. MoJ and MHCLG and the relevant devolved administrations therefore consulted separately.
- 1.11 For Local Government Pension Schemes, separate consultations were undertaken by MHCLG, the Scottish Government and the Department for Communities in Northern Ireland for the LGPSs in England and Wales, Scotland and Northern Ireland respectively. The Department of Justice also consulted separately for the devolved judicial pension scheme in Northern Ireland.
- 1.12 Responsibility for public service pensions is devolved¹⁰ in Northern Ireland and established under separate primary legislation¹¹ to that in Great Britain. However, the NI scheme provisions are very similar to those for the comparable schemes in Great Britain and in each case the NI consultations reflected identical policy options.
- 1.13 Following consultation, the government agreed to proceed with the DCU for all unfunded schemes, other than the judicial schemes. The DCU enables eligible members to make a choice as to whether to take legacy or reformed scheme benefits for the remedy period when their pension benefits become payable or, if a pension is already in payment, as soon as practicable once the necessary legal provisions are in force. This approach was supported by the majority of respondents to the Treasury's consultation. The judiciary will be offered an "immediate choice" as the respondents to the MoJ consultation supported having the ability to make an earlier decision. In a Written Ministerial Statement,¹² it was confirmed that local government will extend the existing underpin protection provided through the scheme to younger members who satisfy general criteria. The Public Service Pensions and Judicial Offices Act 2022 (the Act) provides for the remedy to be implemented in the unfunded schemes, the LGPSs and the judicial schemes.
- 1.14 The reformed schemes themselves are not discriminatory, and the government wants to ensure that all members are treated equally in respect of the scheme design available to them after the discrimination has been addressed.
- 1.15 The Act required that the unfunded legacy pension schemes were closed in relation to service after 31 March 2022. The remedy period, during which

⁹ This covered the following schemes: NHS in England and Wales, NHS Scotland, Teachers in England and Wales, Teachers in Scotland, Firefighters in England, Firefighters in Wales, Firefighters in Scotland, Police in England and Wales, Police in Scotland, UK Armed Forces, Civil Service in Great Britain, and the Civil Service (Others) scheme. Changes to the judicial pension schemes, the Local Government Pension Scheme in England and Wales, and the equivalent scheme in Scotland, as well as the public service pension schemes in Northern Ireland have been consulted on separately.

¹⁰ Some public servants in Northern Ireland, such as military personnel and tax officers, are members of non-devolved pension schemes and are covered by the consultations on those schemes.

¹¹ <https://www.legislation.gov.uk/niu/2014/2/contents>

¹² <https://questions-statements.parliament.uk/written-statements/detail/2021-05-13/hcws26>

members in scope will have a choice of legacy or new scheme benefits, therefore ended on 31 March 2022.

Next steps

- 1.16 The government has introduced new legislation in the form of these Directions. The relevant powers under the Public Service Pensions and Judicial Offices Act 2022 (the "Act") must be exercised in accordance with the Directions. The publication of the Treasury Directions means that Secretaries of State and the Scottish and Welsh governments can proceed to consult on scheme regulations to remedy the discrimination in each public service scheme.
- 1.17 The impact of the provisions in the Directions have been assessed via this document (EqIA), this includes equality impacts of each of the provisions in the Directions on the protected characteristics as identified in the Equality Act 2010. Any additional impact of the scheme regulations made under the relevant powers of the Act will be considered further at a scheme specific level when the responsible authority for each scheme consults on those regulations.
- 1.18 The PSED is an ongoing duty which will continue to be monitored and reviewed through to implementation of scheme regulations made under the powers provided by the Act. Further analysis on the detailed scheme regulations should be conducted by the responsible authorities, but this should exclude all measures where the final policy is set out in the primary legislation or the Treasury Directions and where impacts have already been assessed in this EqIA or a previous EqIA. Mitigations should be considered if and where additional impacts of the policy on protected characteristics are identified, within the scope of the delegated powers available. Any such further potential impacts and mitigations therefore relate only to consequential aspects of enacting the overarching policy and not to the main policy implemented via the measures in the Act or the Treasury Directions, which have already been assessed.

Chapter 2

Equality impact overview

General equality impact summary

- 2.1 This chapter provides a high-level overview of the equality impacts identified for the measures in the Directions. Chapter 3 explores these equality impacts further.
- 2.2 These equality impacts have been explored and grouped by reference to the nine protected characteristics as identified in the Equality Act 2010, in line with the government's duty to have regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations. These protected characteristics are explored as follows:
- A. Age
 - B. Sex, Pregnancy and Maternity
 - C. Race
 - D. Disability
 - E. Other protected characteristics (sexual orientation, gender reassignment, religion or belief and marital or civil partnership status)
- 2.3 The government has reached the conclusions set out in this assessment based on consideration of previous equality impact assessments, including at the consultation and consultation response stages,. The previous assessments undertaken are set out in Table 1 below.
- 2.4 It will be for responsible authorities to assess the potential for equality impacts when they are preparing their scheme regulations using the relevant powers in the scheme.

Table 1: Previous equality impact assessments

Equality impact assessment	Department	Stage produced	Measures covered
Public Service Pensions EqIA	HM Treasury	Consultation – July 2020	<i>McCloud</i> judgment
Public Service Pensions Updated EqIA	HM Treasury	Updated for consultation response – February 2021	<i>McCloud</i> judgment
Equality impact assessment	Department of Finance in Northern Ireland	Consultation response – February 2021	Northern Ireland <i>McCloud</i> judgment
Equality Analysis for Local Government Pension Scheme	Ministry of Housing, Community and Local Government	Consultation – June 2020	Local Government <i>McCloud</i> judgment
Local Government Pension Scheme GAD Equality report	Ministry of Housing, Community and Local Government	Government Actuary's Department (GAD) LGPS equality analysis – June 2020	Local Government <i>McCloud</i> judgment
Local Government Pension Scheme NI Equality report	Department for Communities in Northern Ireland	Consultation – November 2020	Northern Ireland Local Government <i>McCloud</i> judgment
Local Government Pension Scheme Scotland Equality report	Scottish Public Pensions Agency (SPPA)	Government Actuary's Department (GAD) LGPS equality analysis – August 2020	Scotland's Local Government <i>McCloud</i> judgment
Judicial pensions response to <i>McCloud</i> EqIA	Ministry of Justice	Consultation – July 2020	Judiciary <i>McCloud</i> judgment
Response to <i>McCloud</i> EqIA	Ministry of Justice	Updated for consultation response – February 2021	Judiciary <i>McCloud</i> judgment
Judicial pensions proposed response to <i>McCloud</i> EqIA	Department of Justice in Northern Ireland	Consultation – October 2020	Northern Ireland Judiciary <i>McCloud</i> judgment
Judicial Pension Reform EqIA	Ministry of Justice	Consultation – July 2020	Reformed judicial pension scheme
Judicial Pension Reform EqIA	Ministry of Justice	Updated for consultation response – February 2021	Reformed judicial pension scheme
Mandatory Retirement Age equality statement	Ministry of Justice	Reviewing the MRA in the judiciary – July 2020	MRA measures

Direct discrimination

2.5 Section 13 of the Equality Act (EA) 2010 provides:

“Direct discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim...”

2.6 The Directions provide how certain powers under the Act must be used by responsible authorities in making scheme regulations. They are designed to apply to all affected members and to support the government’s objective of restoring members to the position they would have been in had the discrimination that arose from the transitional provisions implemented in 2014-2016 not arisen.

Indirect discrimination

2.7 Indirect discrimination is set out under Section 19 of the EA 2010 as follows:

“Indirect discrimination

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B’s.

(2) For the purpose of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B’s if –

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.”

2.8 The government does not consider that the measures set out in the Directions will have any differential impact on individuals with regard to protected characteristics.

Specific Equality Act legislation

Harassment and victimisation

- 2.9 Harassment under the Act includes unwanted conduct related to a relevant protected characteristic which has the purpose or effect of violating the victim's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.
- 2.10 The government does not consider there would be a risk of harassment or victimisation as a result of any of the measures in the Directions.

Advancing equality of opportunity

- 2.11 The government has considered how all the measures in the Directions might impact on the advancement of equality of opportunity. The measures in the Directions affect all eligible members, irrespective of their protected characteristics. The government therefore does not think any of these measures would negatively affect equality of opportunity.

Eliminating unlawful discrimination in relation to disability and duty to make reasonable adjustments

- 2.12 The government has very limited evidence to assess whether any of the measures in the Directions are likely to indirectly discriminate against people with disabilities, due to limitations in the available data on this characteristic, as set out in previously published EqlAs. However, using analysis of the available data, it is reasonable to assume that the measures in the Directions will not unlawfully discriminate in relation to disability.

Fostering good relations

- 2.13 The government does not consider that the measures in the Directions will actively foster good relations between those who share a protected characteristic and those who do not. However, the government has paid regard to the need to foster good relations when formulating the proposals for these measures so that they are not incompatible with this aim.
- 2.14 The government believes that the measures in the Directions would respect the fostering good relations principle, as the Directions would not create differences in treatment regarding the future pension terms within a particular category of employment.
- 2.15 The government will continue to update this equality statement in light of any new evidence in accordance with the ongoing nature of responsibilities under the PSED.

Chapter 3

Equality impact analysis: Directions

Introduction

- 3.1 This chapter sets out the equality impacts of each of the measures in the Directions on the protected characteristics as identified in the Equality Act 2010, in line with the government's duty to have regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations.
- 3.2 The government does not consider that the measures set out in the Directions will have any differential impact on individuals with regard to protected characteristics.

Part 2: Consideration of measures

Direction 4 & 22: Powers to reduce or waive liabilities

- 3.3 These Directions provide that where scheme regulations are made under sections 18 and 56 of the Act in relation to an amount owed by a member to the scheme, scheme regulations must specify matters that the scheme manager must consider in exercising a discretion about whether to reduce or waive the liability. The Act provides for corrections of benefits to be made where the benefits owed to a pensioner member or in relation to a deceased member change as a result of the remedy (e.g.. where the member or their representative become entitled to benefits that are different to those that have already been paid). The Directions require scheme regulations to provide that the scheme manager must apply an assumption in favour of recovering the liability (unless it is uneconomic to do so). The purpose of the remedy provided by the Act is to place affected members (or their representatives) into the financial position that they would have been in but for the unlawful discrimination that arose. The Directions therefore seek to ensure that any unequal treatment that has arisen in the past is corrected and that all members are placed in an equivalent position. The Directions are therefore expected to have a positive impact by ensuring that previous unequal treatment in relation to age is removed and members are placed in an equivalent position as though it had never occurred.
- 3.4 The Directions provide that scheme regulations must provide that a scheme manager must have regard to whether, instead of or in addition to reducing or waiving a liability, it is appropriate to instead offer the member or their representatives the opportunity to pay the liability in instalments under an

agreement between the parties. The purpose of the Directions is to afford members or their representatives with a means of repaying a liability over time where it is appropriate to do so.

- 3.5 The Directions provide that the correction specified in the Act should be applied, unless there are circumstances that mean the liability should not be paid in full or in part. The Directions set out circumstances that may be relevant. For example, Direction 4(3)(a) refers to the circumstances where the liability arises because of the choice made by the member or their representatives. A member could, for example, choose to receive different benefits in relation to their remediable service and in making that decision could choose to take a smaller lump sum than they had originally received, in order to receive a greater pension. It would not be fair to other members or to taxpayers for the liability arising in relation to the lump sum correction to be waived or reduced. If it were waived or reduced the member would be placed in a more beneficial position than other members. In such cases, the liability will have arisen as a result of the member's preference to receive a higher pension, not as a result of any decision imposed upon them. In such circumstances it would be for the scheme manager to determine whether the liability could appropriately be paid by instalments from the increased pension the member has chosen to receive.
- 3.6 Direction 4(3)(c) provides that a relevant circumstance could be where a member has mixed service. This relates to members who had protection and therefore moved from a legacy scheme into a reform scheme on a date after 1 April 2015 and before 31 March 2022. Such members are not able to retain mixed service under the remedy provided by the Act: they may choose to receive legacy benefits in relation to their relevant service or they may choose to receive reform scheme benefits but may not receive a combination. This issue was covered in the equalities analysis of the Act and is necessary to avoid creating new unequal treatment between members who received taper protection due to their age and other members who were not eligible as they were older or younger. In the majority of cases members who received taper protection will be better off as a result of receiving legacy or reformed scheme benefits instead. However, our analysis is that a small number of members may be worse off as a result. The impacts of the government's policy in relation to taper protected members have already been set out at paragraphs 3.14 – 3.17 of the Equalities Impact Assessment for the Act. The Directions deliver on the previous commitment, set out in the government's consultation response and in the previous equalities impact assessment, to ensure that mitigations are available to scheme managers which mean no member will be subject to an unreasonable individual burden or would suffer significant prejudice. The Directions provide that, scheme managers will be able to consider whether the member's circumstances mean that it is appropriate to waive or reduce the liability that arises because of the removal of mixed service.
- 3.7 Direction 4(4) to (9) of the Directions are concerned with reducing any liability owed by amounts to reflect the tax relief that a member would have received on the payments had they been made at the appropriate time. The government recognises that the way the McCloud remedy interacts with the statutory time limits for collection of tax in previous years could benefit some members over others. One aspect where an individual's tax position may

change as a result of the McCloud remedy is member contributions. Contributions to tax registered pension schemes are made tax-free, so any adjustment in these contributions will have implications for an individual's tax position. The interaction between the tax relief on contributions and statutory time limits could lead to difference in treatment between younger and older members which was set out at paragraphs 3.20-3.24 of the Equalities Impact Assessment for the Act.. Therefore, the government has taken steps to resolve this and the purpose of the Directions is to ensure that members are placed in the same net position as they would have been had the discrimination not arisen. Directions 4(10)-(12) require scheme managers to provide members with details of how the amounts are calculated and make provision for members to appeal the determination where they believe the calculation is incorrect.

- 3.8 The Directions therefore are concerned with ensuring that affected members are treated equally with other members. The provision has a positive impact on members, ensuring the same outcome for all members.
- 3.9 Direction 22 makes similar provision for members of the judiciary.
- 3.10 We do not envisage that the measures in the Directions which place requirements on scheme regulations in relation to the reduction or waiving of liabilities will lead to different impacts on individuals with protected characteristics. The measures are concerned with ensuring that the remedy can be delivered effectively and are therefore expected to have a positive impact in correcting age based unequal treatment that arose previously. In the case of taper protected members, the Directions deliver mitigations where the need for these was set out in previous equalities analysis conducted in relation to the Act.

Direction 5 & 23: Voluntary Contributions

- 3.11 These Directions are concerned with scheme regulations that make provision about cases in which a member has paid voluntary contributions to a scheme during their remediable service. The Act provides powers for scheme regulations to make provision to deal with cases where members made voluntary contributions during their remediable service. The powers will enable scheme managers to vary or extinguish benefits that arose from voluntary contributions made by the member so that the member can be put into the position that they would have been in absent the discrimination and consistent with the treatment and options available to other members.
- 3.12 The Directions provide that scheme regulations must make provision to ensure that where rights that arise from voluntary contributions are varied or equivalent rights are awarded the scheme actuary must advise that the new rights are of equivalent value to those foregone. The Directions also provide that where benefits are extinguished and alternative benefits provided, the alternative benefits must be calculated as though the voluntary contributions were paid to purchase those benefits at the appropriate time. Where members are compensated for extinguished benefits, rather than being awarded equivalent or alternative benefits, the Directions provide how the compensation must be calculated.

- 3.13 The purpose of the Directions is to ensure that scheme regulations can provide an appropriate remedy to members. The Directions, taken together, ensure that the member receives an appropriate benefit in relation to their voluntary contributions. It will be for scheme regulations to determine what options are available to members dependent on the facts that apply and to undertake further analysis of any impacts that arise.
- 3.14 We have assessed that these provisions have no differential impact on individuals with protected characteristics. This is because the Directions simply ensure that scheme regulations must provide members with a fair outcome where rights in relation to voluntary contributions made by a member are varied or extinguished.
- 3.15 Direction 23 makes equivalent provision for members of the judiciary.

Direction 6: Transfers

- 3.16 Direction 6 sets out matters that scheme regulations must provide for where they make provision in relation to transfers that have been made in relation to periods of remediable service.
- 3.17 Direction 6(2) provides that, where an individual has transferred out rights in respect of remediable service from a scheme, regulations must make provision requiring the scheme manager to provide them with a “transferred out remediable service statement”. This ensures that members who have left the scheme are informed about any additional rights they are entitled to as a result of the remedy being implemented. This measure is expected to have a positive impact on all members, including those of with protected characteristics.
- 3.18 Direction 6(5) provides that where scheme regulations make provision for compensation to be paid to members in relation to transfers that were made from a public service scheme to a non-public service scheme in relation to a member’s remediable service. Where such compensation is paid, the Directions require the scheme regulations to reduce the compensation to reflect tax charges that would be due on the payment. The purpose of the directions is to ensure that members are placed in the correct net financial position.
- 3.19 Direction 6(6) is concerned with cases where scheme regulations make provision about transfers between public service pension schemes that relate to remediable service. The Directions require that scheme regulations must include provision that requires the scheme manager to obtain advice from the scheme actuary to ensure that a member receives rights of an equivalent value where transfers are varied and that the transfer must be calculated as though it had been made at the time of the original transfer. The reason for these requirements is to ensure that members are awarded correct benefits in relation to a previous transfer of their remediable service and are placed in the position that they would have been in had the discrimination not arisen.
- 3.20 These provisions do not have a differential impact on individuals with protected characteristics. They ensure that where schemes make provision about transfers, members are placed into the correct position that they would have been in had the discrimination not arisen.

Direction 7, 24: Further powers to make provision about special cases (scheme pays)

- 3.21 The Directions require that scheme regulations must include provision about the payment of certain tax charges on behalf of members by the scheme. The Directions require that scheme regulations must provide members with access to the “Scheme Pays” facility where an increased annual allowance charge is due and the ordinary conditions for using “Scheme Pays” are not met. “Scheme Pays” allows the member to settle the annual allowance tax charge via the scheme in exchange for actuarially reduced pension benefits. These directions therefore allow all individuals to access the “Scheme Pays” facility. Direction 24 makes equivalent provision for members of the judiciary.
- 3.22 These provisions will not have a differential impact on individuals with protected characteristics. They ensure that all members must be afforded access to “Scheme Pays” facility in relation to relevant tax charges.

Direction 8, 25 & 33: Power to pay compensation

- 3.23 These Directions relate to the payment of compensation under Sections 23, 59 (for the judicial scheme) and 82 (for the local government pension scheme). As a result of the discrimination or in implementing the remedy, it may be appropriate to provide compensation to members where they have suffered a direct financial loss as a result of the discrimination that occurred or as a result of the remedy provided. The Directions set out the matters that scheme managers must comply with in exercising their power to pay compensation.
- 3.24 The Directions require that when a scheme manager considers whether a claim for compensation should be paid, they must apply tests on regularity (whether the claim is compliant with the relevant legislation and wider legal principles), value for money (whether the payment of compensation delivers value as a whole), and propriety (the scheme manager must maintain high standards of public conduct, ensure robust governance, and ensure compliance with financial controls and reporting obligations). The Directions require that the scheme manager must ensure that any payments of compensation are appropriate and in accordance with established legal principles.
- 3.25 The purpose of compensation is to remedy any financial loss that a member suffered as a result of the discrimination that arose or as a consequence of the steps taken under the Act to remedy the discrimination.
- 3.26 We do not consider that providing compensation for direct financial losses suffered by members will have a differential impact on individuals with protected characteristics. Scheme managers will need to be considerate of any potential administrative issues that arise as part of the public sector equality duty.
- 3.27 Direction 25 and 33 make equivalent provisions for members of the judiciary and the local government pension scheme respectively.

Direction 9, 26 & 34: Compensatable losses: compensation

- 3.28 This Direction specifies the types of loss that may be compensated, referring to direct financial losses and specified Part 4 tax losses.
- 3.29 As set out at Paragraph 3.7 the way the McCloud remedy interacts with the statutory time limits for collection of tax in previous years mean that it is necessary to provide compensation for any overpaid tax that cannot be corrected via the tax system. These Directions provide compensation for tax losses that arise either as a result of the discrimination or through the operation of the Act.
- 3.30 These provisions are not expected to have a differential impact on individuals in regard to protected characteristics.
- 3.31 Direction 26 and 34 make equivalent provisions for members of the judiciary and the local government pension scheme respectively.

Direction 10 & 35: Indirect compensation

- 3.32 Direction 10 provides that scheme regulations must include provision for indirect compensation in relation to cases where a tax charge has been paid on behalf of the member by the scheme.
- 3.33 There may be instances where, for example, a member has paid a tax charge using 'scheme pays' but the amount paid is incorrect following the implementation of the remedy. As per paragraph 3.19, under "Scheme Pays" the scheme pays a charge on behalf of the member (at the member's request) and the scheme reduces the member's pension by an appropriate amount (determined by the scheme actuary). The purpose of the Directions is to require schemes to revisit the original amount paid via the scheme where, because of remedy, an overpayment of tax has arisen. This allows the amount to be corrected by altering the reduction that was made to the member's pension benefits to reflect the lower tax charge.
- 3.34 Direction 10(2) states that a decision to provide indirect compensation is determined via the same principles-based test stipulated in Direction 8, 25 and 33. In addition, the scheme manager must consult with the scheme actuary to determine what additional benefits to pay the member. Those benefits must have actuarial factors applied to them as if the pension debit was in force when it was originally calculated. This will ensure that the member is granted the correct benefit and is restored to the original position they had been in before the discrimination arose.
- 3.35 These provisions are positive for all members regardless of protected characteristics.
- 3.36 Direction 35 makes equivalent provision for members of the local government pension scheme.

Direction 11 & 36: Compensatable losses: indirect compensation

- 3.37 This Direction specifies the Part 4 tax losses incurred by a member that may be compensated. As above, these Directions provide compensation for tax losses

that arise either as a result of the discrimination or through the operation of the Act.

- 3.38 These provisions do not have a differential impact on individuals of protected characteristics.
- 3.39 Direction 36 makes equivalent provision for members of the local government pension scheme.

Direction 12: Remedial arrangements to pay voluntary contributions to legacy schemes

- 3.40 Direction 12 requires that where scheme regulations make provision to allow members to make remediable voluntary contributions, the regulations must include provision in relation to tax relief amounts. The Act provides that scheme regulations may make provision giving members with remediable service to enter into new arrangements to pay voluntary contributions. The purpose of the Directions is to ensure that where such arrangements are made members are placed in the correct net financial position and as though the discrimination had not arisen.
- 3.41 The Directions are needed because of different tax relief treatment for active and non-active members. An active member will still be eligible to receive tax relief at their marginal rate in the year they pay the voluntary contributions. However, deferred or retired members are not entitled to tax relief on their voluntary contributions. The Directions ensure equal treatment between these groups by requiring that the amount paid to the scheme in relation to deferred and pension members is reduced to reflect this.
- 3.42 Direction 12(2)-(7) specify how tax relief amounts are to be calculated and applied. Directions 12(8)-(10) require scheme managers to provide members with details of how the amounts are calculated and make provision for members to appeal the determination where they believe the calculation is incorrect.
- 3.43 The Directions ensure that members who make remediable voluntary contributions are placed in the correct net financial position regardless of whether they are active, deferred or pensioner members. The Directions remove unequal treatment and are not expected to have any differential impact on individuals with protected characteristics.

Directions 13-16, 27-30 & 37-40: Interest

- 3.44 The Directions require scheme regulations to include provision under which interest is calculated and paid on relevant amounts owed by schemes in relation to members or owed in relation to members to schemes. The Directions specify the applicable interest rates that must be used and the periods over which they are to be applied.
- 3.45 Where interest is payable in relation to amounts owed to schemes, interest is charged to reflect the fact that the member has had the benefit of the money over time, compared to members who paid the appropriate amount at the appropriate time. A member who underpaid employee contributions could have invested the additional money needed for those contributions over time

and earned interest on that investment; or spent it on items that they might otherwise not have been able to afford. Their comparators in the scheme will have been paying the correct level of contributions throughout, so would not have had the benefit of the additional money over time.

- 3.46 Where money is owed to schemes the rate of interest prescribed in the Directions that is calculated in line with the interest available on the NS&I easy access savings account, 'Direct Saver'. Recognising that members had no option to make any payment when it was originally due, the government considers that opting for a savings account rate, which has typically been below inflation since 2015, is most appropriate approach.
- 3.47 Where schemes owe money in relation to members, the rate of interest prescribed in the Directions is that specified in the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996. This is in line with the interest awarded to the claimants in the associated employment tribunals. Adopting the same approach for the wider remedy will ensure consistent outcomes with those who were awarded interest payments by the employment tribunal. The Employment Tribunal rate of interest will be applied for the period up to 28 days after the member is provided with a remediable service statement by the scheme manager. For any period after that, if any, interest will be applied in line with the interest available on the National Savings & Investments (NS&I) easy access savings account, 'Direct Saver'. For the judiciary, the Employment Tribunal rate will run up to the date of payment, in light of the different way the remedy operates in those schemes. For the Local Government Pension Scheme, the periods of interest will be set out in their scheme regulations, to take account of the different way their remedy operates.
- 3.48 The Directions provide that payments to members in relation to tax related compensation which will accrue in line with HMRC's interest rate on tax refunds, which is set as the Bank of England base rate minus 1% with a lower limit of 0.5% p.a, to ensure consistency with other members who may have overpaid tax and claimed refunds directly from HMRC within the statutory time limits to do so.
- 3.49 The application of interest on payments owed to schemes will most likely arise in relation to unprotected members who owe contributions as a result of being moved to the relevant legacy scheme on 1 October 2023 (or such earlier implementation date as scheme regulations may prescribe) or where any member elects to receive reform scheme benefits at retirement. In the majority of schemes, the contribution rates are identical in the legacy and reform schemes and any amount owed will be limited to amounts arising from any differences in pay that is counted for the purposes of calculating a pension (for example overtime and allowances are not usually pensionable in older final salary schemes, but are pensionable in some career average schemes). For the Police and Firefighter schemes there are different employee contribution rates across the legacy and reform pension schemes and members are more likely to owe contributions (or to be owed) contributions when moving between these schemes. Unprotected members are more likely to owe contributions and to therefore be subject to interest on those amounts. As transitional protection status was determined by age this means that

younger members may be more likely to be affected. However, the purpose of the Directions is to ensure fair treatment between groups of members. The Directions apply interest to money owed to schemes in relation to members to ensure fair and equal treatment of all members. Otherwise, members who make payments to the scheme later are in a more favourable position compared to members who paid at the time the payment originated from. The Directions are not therefore expected to have an adverse impact on this group or others with protected characteristics, but instead seek to place them in an equivalent position.

- 3.50 Directions 27-30 and 37-40 make equivalent provisions (with the exceptions noted above) for members of the judiciary and local government pension scheme respectively.

Direction 18 & 42: Process: application for compensation or indirect compensation

- 3.51 The Directions provide that scheme regulations must include provision in accordance with Direction 18.
- 3.52 Direction 18(1) provides that compensation or indirect compensation payable by a scheme may be paid only on the making of an application to the scheme manager in such form or manner as determined by the scheme manager, subject to Direction 18(2).
- 3.53 Direction 18(2) relates to Part 4 tax losses, specifically overpaid annual allowance and lifetime allowance tax charges, that may arise on the implementation of the remedy that cannot be corrected through the tax system... Typically, HMRC can only provide overpayment relief to members for a tax charge incurred four years from the correction of the tax position, referred to as "in-scope years". For the remainder of the remedy service in "out-of-scope years", members will need to apply to their scheme for compensation in respect of the overcharged tax. To provide compensation, the member is required to obtain a calculation from HMRC, using the member's tax information, to help determine the tax charge before and after the duration of the remediable service. The member will need to sign a declaration to confirm that the calculation is correct and complete without information provided falsely.
- 3.54 Direction 18(3) states that the scheme manager will calculate if the member is owed money by the scheme to determine if the member is entitled to any compensation tax following receipt of the application. The following Directions, 18(4)-(5) provide information on how the calculation was made and confers a right of appeal to the member via a written application with a reasoned explanation of an alternative calculation with supporting evidence where relevant. Direction 18(6) determines the outcomes of the member's appeal of the decision, including maintaining the schemes original calculated amount, the altered amount and an explanation of the dispute resolution mechanism. The scheme manager must provide the member with an explanation of the outcome.

- 3.55 The government anticipates that only a small proportion of the members affected by the pension remedy will need to make applications for overcharged tax amounts. These measures are designed to assist those members by restoring them to their original position absent the discrimination. The calculation process could require the member to employ the services of a financial professional which may be considered a direct financial loss, depending on the merits of the member's compensation application. The Directions are therefore appropriate with public sector equality duty considerations.
- 3.56 Direction 42 makes equivalent provision for members of the local government pension scheme.

Direction 19, 31 & 43: Process: netting off

- 3.57 Direction 19 provides that where different amounts in relation to the remedy (and any interest on them) fall to be paid at the same or approximately the same times, the scheme manager may aggregate those amounts. The balance will then be payable from the scheme or to the scheme as appropriate. The Directions provide that any amounts owed by a scheme must be aggregated and any amounts owed to the scheme must also be aggregated. Where the amounts owed by the scheme exceed those owed to the scheme, the balance must be paid by the scheme. Where the amounts owed to the scheme exceed those owed by the scheme, the balance must be paid by to the scheme.
- 3.58 The Directions provide that the scheme manager must provide the appropriate person with an explanation of the calculation and make provision for members to appeal the determination where they believe the calculation is incorrect.
- 3.59 The Directions avoid multiple payments to and from the schemes in relation to remedy. The Directions are not expected to have any differential impact on persons with protected characteristics.
- 3.60
- 3.61 Directions 31 and 43 makes equivalent provision for members of the judicial pension scheme and the local government pension scheme.

Direction 20: Remediable service statements

- 3.62 Direction 20 specifies additional information that must be provided to members, where applicable, by schemes. The Directions ensure that members are provided with full information about the remedy, including benefits available to the member, their choices, compensation and the process to be followed.
- 3.63 The government does not envisage that this measure will have any differential impact on individuals with protected characteristics.

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